

ALLEGED NAZI WAR CRIMINALS

HEARINGS
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
AND INTERNATIONAL LAW
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS
SECOND SESSION
ON
ALLEGED NAZI WAR CRIMINALS

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CONTENTS

HEARINGS HELD

	Page
July 19, 1978	1
July 20, 1978	63
July 21, 1978	117

WITNESSES

Allen, Charles R., Jr.	30
Prepared statement	58
Crystal, Robert, attorney advisor, GGD, General Accounting Office	4
De Capua, Mario	150
DeVito, Anthony	64
Gerety, Pierce	91
Greene, James F.	84
Lowe, Victor L., Director, General Government Division, General Accounting Office	4
Reiger, John F.	91
Schiano, Vincent	132
Stanton, Daniel, Associate Director GGD, General Accounting Office	4
Tripp, Almanza	102
Zutty, Sam	118

APPENDIXES

Appendix 1	
1. Displaced Persons Act of 1948	161
Displaced Persons Act of 1950, an act to amend the Displaced Persons Act of 1948	165
Executive Order No. 10003, providing for the investigation of and report on displaced persons seeking admission into the United States	172
2. Refugee Relief Act of 1953	172
Appendix 2	
History and background of section 13 of the Displaced Persons Act of 1948, as amended and exclusion of Nazis from the United States	178
Appendix 3	
1. Procedures for revocation of citizenship of naturalized citizens and deportation of aliens	182
2. Opinion of the U.S. District Court, Southern District of Florida in <i>U.S. v. Feodor Fedorenko</i>	182
3. Hon. Joshua Eilberg, chairman, Subcommittee on Immigration, Citizen- ship and International Law, correspondence with Hon. G. B. Bell, Attorney General of the United States	203
Appendix 4	
Correspondence received by the Subcommittee on Immigration, Citizenship and International Law commenting on the General Accounting Office's final report on alleged Nazi war criminals	205
Appendix 5	
A further response to questions provided by Mr. Pierce J. Gerety	209

ALLEGED NAZI WAR CRIMINALS

WEDNESDAY, JULY 19, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
CITIZENSHIP, AND INTERNATIONAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2237, Rayburn House Office Building, Hon. Joshua Eilberg (chairman of the subcommittee) presiding.

Present: Representatives Eilberg, Holtzman, Hall, and Sawyer.

Also Present: Garner J. Cline and Arthur P. Endres, counsel; Raymond P. D'Uva, assistant counsel; Peter Regis, legislative assistant; and Alexander B. Cook, associate counsel.

Mr. EILBERG. The subcommittee will come to order.

Ms. HOLTZMAN. Mr. Chairman, I ask unanimous consent that the subcommittee permit coverage of this hearing in whole or in part by television broadcast, radio broadcast, or still photography, in accordance with committee rule.

Mr. EILBERG. Without objection, the motion is granted.

Since 1973, my colleagues and I have been trying to find out exactly what transpired within the U.S. Government beginning in 1948 which permitted the admission into the United States of a significant number of alleged Nazi war criminals in violation of our laws.

Why, after individuals were identified as having committed these crimes against humanity, were they allowed to remain undisturbed in the midst of our society enjoying the very privileges they sought to destroy, protected by the same laws they violated?

I can only ask why?

Were the U.S. Government agencies deliberately shielding these individuals?

Were they so ignorant of the atrocities committed by the Nazi regime that they gave no significance to these persons being here?

I sought to obtain answers to these questions when, on January 13, 1977, I requested the Comptroller General to conduct a thorough investigation of this situation and specifically asked him to determine whether there was any evidence of deliberate attempts on the part of U.S. Government agencies to obstruct or quash investigations and prosecutions of these individuals. I also asked the Comptroller General to explore all avenues to get the true facts behind these cases.

We have received the report from the Comptroller General and, in all candor, I must say that my questions have not been answered.

I hope that the series of hearings we start today and any subsequent hearings we will hold in the future, will allow us once and for all to get to the bottom of this intolerable situation.

The GAO report has hedged on the most important questions.

An investigation on the situation ordered by the former Commissioner of Immigration and Naturalization was self-serving and exculpatory, to say the least.

We have sought to call witnesses to these hearings who have been associated or are knowledgeable of the various stages of the development and aggravation of this situation.

My only request of the witnesses is that they are open, frank, and candid in their testimony. Where it is deemed prejudicial to an ongoing investigation or prosecution, discussion of specific cases by name will be avoided.

These hearings have been planned to explore four phases of the problem. First, we shall hear from Mr. Lowe of the General Accounting Office with regard to the report I alluded to before, issued on May 15, 1978, in response to my request.

Second, we will hear from witnesses who have been intimately connected in the early investigation of allegations of war crimes, some who have made independent studies and research on the subject and those who have made various charges against INS in the handling of these cases.

We expect to pinpoint the charges and receive evidence of substantiation.

Third, we have called forward former U.S. Government officials responsible for the administration of the Displaced Persons Act of 1948 and the Refugee Relief Act of 1953 who were responsible for the admission into the United States of displaced persons and refugees under these acts.

We expect to explore with them all phases of the processing of the applicants under these acts. We shall seek explanations from them on how these excludable persons could have been admitted to the United States when the law was specific in excluding them.

And fourth, we have former INS officials who were actively involved in the early stages of the investigation of alleged Nazi war criminals. We shall seek to determine exactly what was happening in INS prior to 1973 when only passive attention was given to investigating allegations of Nazi war criminal involvement.

We intend to hold further hearings in the near future to determine the roles played by the FBI, CIA, the Army, and the State Department in these cases, as well as to examine in detail the progress being made by INS presently.

Before we begin receiving testimony this morning I would like to remind the witnesses, the members and, of course, the general public that since this is an open hearing the use of names of individuals against whom charges of war atrocities have been made, must be avoided.

House Rule 21, clause 2, prohibits receipt of testimony in the course of an open hearing which, and I quote, "may tend to defame, degrade, or incriminate any person."

Although I feel complete and thorough inquiry into the matter before us today is warranted, it is also my strong belief that the

inquiry as much as possible should be open to the American public, and for this reason I ask that the use of names be avoided.

In addition, many of the cases which were the subject of the GAO investigation and of which our other witnesses have knowledge, are presently actively pending in various stages of investigation and litigation. Reference to these cases by name here today may possibly jeopardize or prejudice those cases.

With this proviso in mind, before calling the first witness, I yield to the gentlelady from New York.

Ms. HOLTZMAN. I thank the chairman for yielding to me, and I want to compliment him for holding these hearings.

The presence in the United States of alleged Nazi war criminals is an ugly blot on our country's history. Much progress has been made since it first came to the attention of members of this subcommittee that the Immigration Service was not acting on cases involving alleged Nazi war criminals.

But the question still remains as to why for so long the Immigration Service did not act on these cases.

Why was it that in 1974, despite having a list of alleged Nazi war criminals, the Immigration Service had assigned no full time professionals to the investigation?

Why was it that the Immigration Service did not seek evidence from abroad?

Why was it that the Service's only inquiries in the United States were about the health of the people under investigation?

I think, Mr. Chairman, these hearings are vitally important to determine whether there was a coverup by the Government of the United States with respect to Nazi war criminals, who was involved in permitting these people to stay despite the allegations against them. And why no serious investigations were conducted until this subcommittee became concerned in recent years.

Mr. EILBERG. The Chair wishes to announce in view of the important subject matter of these oversight hearings it will be the policy of the subcommittee to swear in each and every witness. As the members know, this is common practice in other committees, and we will do likewise for these hearings.

Mr. Lowe, before I recognize you, Mr. Victor L. Lowe, Director, General Government Division, General Accounting Office, would you be kind enough to identify your associates since we would like to have their names on the record?

Mr. LOWE. Yes, Mr. Chairman.

To my immediate left is Mr. Dan Stanton, Associate Director, GGD, who is in charge of all of our work in the law enforcement area.

To my right is John Tipton, Audit Manager, the principal man on this particular job, and Mr. Robert Crystal is to the extreme right, and he is from our Office of General Counsel.

Mr. EILBERG. All right, gentlemen, can we stand up while you take the oath? Would you raise your right hands, please?

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LOWE. I do.

Mr. STANTON. I do.

Mr. TIPTON. I do.

Mr. CRYSTAL. I do.

Mr. EILBERG. Thank you.

Mr. Lowe, would you proceed with your statement or in lieu of your statement whatever remarks you would like to make?

TESTIMONY OF VICTOR L. LOWE, DIRECTOR, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY DANIEL STANTON, ASSOCIATE DIRECTOR, GGD; JOHN TIPTON, AUDIT MANAGER, GGD, AND ROBERT CRYSTAL, ATTORNEY ADVISER, GGD

Mr. LOWE. I have a very brief statement, Mr. Chairman. If you don't mind I would like to read it into the record.

Mr. EILBERG. Please proceed.

Mr. LOWE. Our testimony today deals with our report dated May 15, 1978, entitled, "Widespread Conspiracy to Obstruct Probes of Alleged Nazi War Criminals Not Supported by Available Evidence—Controversy May Continue."

[For text of GAO report, see Appendix V, Hearings before the Subcommittee on Immigration, Citizenship and International Law, "Alleged Nazi War Criminals," vol. I, serial No. 95-39.]

Mr. LOWE. Your letter dated January 13, 1977, requested this report on whether INS personnel deliberately obstructed active prosecution of alleged Nazi war criminals or engaged in a conspiracy to withhold or quash any information in its possession.

In conducting this review, we obtained information from INS, the FBI, CIA, U.S. attorneys, and the Departments of Defense and State. At various times during the past year we employed 6 to 10 staff members on this assignment, a total of about 1,000 direct staff days were expended.

Mr. EILBERG. Can I interrupt, Mr. Lowe? Would you also indicate the total moneys appropriated or used for this study?

Mr. LOWE. In excess of \$180,000, Mr. Chairman.

Mr. EILBERG. All right.

Mr. LOWE. We examined case files, interviewed current and former Government employees in the United States and overseas, and analyzed immigration and naturalization laws.

We also visited and interviewed the Chief, Israeli Police Section for Investigation of Nazi War Crimes, Tel Aviv, Israel; Director, Documentation Center for Nazi War Crimes, Vienna, Austria; Director, International Criminal Section of Federal Republic of Germany Justice Ministry, Bonn, Germany; Director, Central Authority of the State Justice Administration, Ludwigsburg, Germany; and the Director of the United States Berlin Document Center, Berlin, Germany.

We have no indication that the information provided to us by the various agencies was not accurate and complete. Because of our limited access to the files and the effect of the passage of time on the availability of information, we cannot adequately assure the subcommittee and the Congress that our findings are complete.

In April 1977, with your assistance, Mr. Chairman, we finally reached an agreement with the Department of Justice whereby INS would screen the appropriate files and cases for third-agency documents and would obtain approval from the third agency, such

as the CIA, FBI, and the Departments of Defense and State, to release the documents for our review.

However, it was not until August that the majority of the third-agency documents were cleared and provided to us. Also in August, the Department of Justice authorized us, under certain guidelines, access to cases recommended for or under legal proceedings.

We believed that to adequately conduct this review, it was essential that we have access to information in agencies investigative files. However, we recognized the agencies concern for protecting the integrity of their investigative operations and their unwillingness to give us direct access to the files.

As you know, Mr. Chairman, we therefore entered into agreements with the CIA and FBI whereby these agencies prepared summaries in lieu of providing original documents of any file holdings on the cases we selected for review. Both agencies provided us the file documents upon our request to support the information included in the summaries.

Also, it was understood by all agencies involved in our review, that since a number of the cases were under current or possible future litigation by the Department of Justice, Department guidance would be obtained in providing available information for our review. This understanding was necessary so that the agencies involved would not in any way prejudice any ongoing litigation by the Department.

As part of our agreement with the Department, the contents of our report and this statement were reviewed and approved on the basis that its contents would not prejudice any ongoing litigation. In addition, it was agreed that individuals included in our sample would not be named at any time without the concurrence of the Justice Department.

This agreement was made in order that we not prejudice any ongoing litigation and also to protect those individuals against whom allegations either have not been proven or investigations have not been completed. Included in our sample are individuals who died before INS received the allegation about them. INS investigation ceases when it finds that the individual has died; thus the allegation is neither proved nor disproved.

The above arrangements and agreements appeared reasonable in view of the complicated matter of access to intelligence-type information and the agencies position regarding their intelligence files. Officials of the various agencies were cooperative and open in our discussions with them.

We believe our approach to this review clearly protected the integrity of all the involved agencies investigative operations.

Also, we believe that despite the limitations on our access, the extensive review we made of INS case files and our discussions with numerous current and former Federal employees were sufficient to support the conclusions we have reached.

As stated on the cover of our report, we believe it is unlikely that a widespread conspiracy existed, but we cannot absolutely rule out the possibility of undetected, isolated instances of deliberate obstruction. In any event, the inherent difficulty in establishing the existence of a conspiracy must be recognized.

Mr. Chairman, we recognize that different people will undoubtedly interpret the information we developed in different ways. Some will be persuaded, as we were, that the existence of a widespread conspiracy was unlikely. Others will probably find cause to strengthen their belief that deliberate obstruction did occur. Thus, the publicity, interest, and controversy about INS' lack of progress may continue.

The controversy may be further compounded because legal delays, appeals, and other procedures, considered with the age of the individual and potential witnesses make it doubtful that the Government will ever be able to deport many subjects of the allegations.

This concludes my prepared statement. A copy of our report is attached to the statement. We would be pleased to respond to any questions you may have regarding the findings in our report.

Mr. EILBERG. Mr. Lowe, we will receive testimony from Mr. DeVito concerning their experiences as INS employees involving alleged Nazi war criminal investigations and proceedings.

The committee has been aware of allegations made by them, and I am sure you are aware of them, especially Mr. DeVito, concerning deliberate delays, missing files, possible bribery and employment by CIA and FBI of certain alleged that the Nazi war criminals.

I presume that each of these allegations was investigated thoroughly by your agency in the course of its inquiry into this matter.

Can you tell us what were the results of those inquiries?

Mr. LOWE. Yes. I am not sure that we investigated each and every one of those. These cases we selected were investigated as far as we could go. If I am not mistaken, Mr. DeVito and Mr. Schiano were both interviewed.

Mr. TIPTON. They were.

Mr. LOWE. Maybe you would like to comment further.

Mr. EILBERG. Mr. Tipton?

Mr. TIPTON. Yes. Both Mr. DeVito and Mr. Schiano did give us certain allegations they had made. During the course of our investigation we did try to substantiate if the allegations were true.

Also, with regard to Mr. DeVito we didn't find anything in our review that would substantiate it.

Also during our review, with regard to Mr. DeVito's allegations, we found they were both investigated by INS internal investigation unit, and the FBI, and they could not substantiate it either.

Mr. STANTON. The allegation regarding other agencies having used some of these alleged Nazis was true, and that is in the report.

Mr. EILBERG. I didn't understand that, Mr. Stanton.

Mr. STANTON. The allegation about other agencies having used some of these people for information sources and so forth was true. We did get evidence of that from the agencies.

Mr. EILBERG. Mr. Tipton—

Mr. STANTON. The matter about deliberate obstruction we could not verify.

Mr. TIPTON. Or missing files.

Mr. EILBERG. Did you, in your opinion, thoroughly go over the complaints offered by Mr. DeVito and Mr. Schiano?

Mr. TIPTON. Yes, we did.

Mr. EILBERG. And did you check them out as thoroughly as you could?

Mr. TIPTON. As thoroughly as we could. We could not check all of them out; we just checked them out with regard to the cases in question.

Mr. EILBERG. What limitations did you find in the ability to check out their complaints?

Mr. TIPTON. We found no limitations.

Mr. EILBERG. You said you went as far as you could, and I don't understand what you mean by as far as you could.

Mr. TIPTON. With regard to the cases in question that had the allegation, we reviewed that file, we did take a look to see if we could substantiate their allegations.

Mr. EILBERG. Mr. DeVito charged that there were files stolen in the transfer, and he refers to missing memos involving alleged Nazi war criminals.

Did you look into those charges or complaints?

Mr. TIPTON. If they were in those cases we reviewed, yes.

Mr. STANTON. In the cases Mr. DeVito was referring to, we did examine the cases, but the INS, the way they keep the files, you could not tell what was supposed to be in the files. But where we were able to determine memos from one agency to another, or that someone prepared a memo, we tried to trace it down, and in most cases we were able to locate them.

Mr. EILBERG. So that you do not rule out the possibility that what Mr. DeVito says may, in fact, be true?

Mr. STANTON. No, sir, we cannot rule it out. We just cannot tell. There is no control over the files, no numbering system. They were pretty much in disarray. You could not tell what should have been in there, so you would not know if something were missing.

Mr. EILBERG. What about the charges by Mr. DeVito of association between certain Nazi war criminals and the FBI and CIA? Did you look into those and what did you find?

Mr. STANTON. They were true, yes, sir. There was the association both with the CIA and with the FBI.

Mr. EILBERG. Would you go into more detail in answer to the question? True to what extent or in what way?

Mr. STANTON. Of the 111 people, names we selected to review, the CIA said that it had been in contact with 22 of the persons on our list. One of those decided not to become involved. The other 21 apparently provided some services to the CIA, 7 of these people were paid for the information provided, and the FBI had information on 47 of the 111 and it told us it had a confidential relationship with 2 of them.

The extent of the involvement we don't know. We did not get into the cases, so we could tell how they were used, what information they provided, how much they were paid.

Mr. EILBERG. Mr. DeVito also refers to payoffs and bribery involved in another Romanian war criminal case. Did you look into that?

Mr. TIPTON. We found no evidence of any payoffs.

Mr. STANTON. We asked those questions of many people involved and just found no evidence.

Mr. EILBERG. You mentioned in your report you looked at 111 cases. How did you select those particular cases to be reviewed?

Mr. STANTON. We looked at all of the names the INS had on file at the time we started the review. This was in February of 1977. And they had the names in various categories like "under investigation," "investigation closed," "person cannot be located," "deceased," and we just selected at random, just picked names from each of the categories. Then at the hearings we had before you last August, Congresswoman Holtzman requested we expand our sample to include all cases on which allegations were made prior to 1973, which we did.

So that the final total was 111. The appendix 3 of our report shows how the categories of the names were selected.

Mr. LOWE. Mr. Chairman, at the time we testified last August, if I remember correctly, we had 75 cases we had selected, and after Ms. Holtzman asked us to go back and get the cases that had arisen before 1973, I believe that added 36 cases to our total, giving us 111.

Mr. EILBERG. That included cases before 1973 as well as subsequent to 1973?

Mr. LOWE. Yes, sir. All cases before 1973, and a number of them afterwards.

Mr. EILBERG. But totaling 111?

Mr. STANTON. Yes, sir.

Mr. EILBERG. What part, if any, did INS play in the selection of those cases?

Mr. LOWE. None, except furnishing the list of names.

Mr. EILBERG. How do you know that you had an adequate selection of cases in selecting that number?

Mr. STANTON. It was not a statistical sample.

Mr. EILBERG. Meaning?

Mr. STANTON. We do not know if we had all names prior to 1973. These were the ones they had on their list. There could have been cases opened and closed prior to 1973 which we did not know about.

Mr. EILBERG. All right.

The Chair will yield at this moment, but I would just like to advise the members we are in a 5-minute rule after we get through our quorum this morning, and I will seek to have unanimous consent that we may meet notwithstanding we are in the 5-minute rule.

If we are unsuccessful in that, it's my suggestion that we simply wait until we get into general debate on the next matter on the floor, and we will try to alert you as quickly as we can that we are ready to proceed.

I would ask, as chairman, I suggest we try to stick to the five minute rule so everyone has an adequate opportunity.

Ms. Holtzman?

Ms. HOLTZMAN. Thank you very much, Mr. Chairman.

In appendix 3 you provide a breakdown of the cases reviewed in your investigation.

I note that although you reviewed all 54 cases on which allegations were received after 1973, you did not review 17 of the 57 pre-1973 cases, about 30 percent.

I notice you referred to the prior colloquy we had in which I indicated to you that I thought in terms of determining why the Government did not act on the Nazi war criminal cases it would be most useful to look at the cases received during the period of inaction and not afterwards.

I am very concerned, therefore, about this breakdown and the failure by the GAO to review 30 percent of the pre-1973 cases. The reason given for the failure to review this number was, and I quote, "Time constraints," stated in appendix 3.

It seems to me that if you found yourself pressed for time that you should have concentrated your efforts on the pre-1973 cases, and not on the post-1973 cases which is what you did. And of particular importance in this regard is your statement on page 54 that of the 17 cases you did not look at, 4 involved individuals who are now under litigation because of new evidence found after 1973.

It would seem to me that there would be precisely the cases that the GAO would want to look at, cases in which the Immigration Service was unable or failed or refused to find evidence for 20-some odd years, and then was able to find evidence to bring a case.

Those are exactly the cases that I thought the GAO would want to look at and to explain to this committee why the Immigration Service originally failed to act and why it found evidence after 1973.

Can you explain to the subcommittee why, despite the colloquy we had last August and despite my letter, you did not look at these 17 cases and why you did not look specifically at the 4 cases involving persons against whom charges were subsequently brought.

Mr. LOWE. If I am not mistaken, Ms. Holtzman, I think there are very similar cases we did look at where they were open investigations and subsequently came up with some kind of action. I doubt seriously these would be any different from those.

Ms. HOLTZMAN. Mr. Lowe, we asked you to look at the cases because we wanted to know what happened. And what you are giving us is a statistical response. But you still come up with a flat statement, "There is no evidence of a widespread conspiracy."

How can you make a statement that there is no evidence of a widespread conspiracy when you are using a statistical procedure with respect to the pre-1973 cases?

I am very concerned about that, and I am also concerned about the fact that a flat statement is made that no evidence exists when, in fact, you did not have access to the raw investigative files of either the CIA or the FBI. I don't understand how you can come up with such a conclusion.

That is not to say that the conclusion may not be accurate, but I don't understand how you can, in all honesty, come up with such a conclusion without having studied all the evidence.

Mr. LOWE. I think, if I am not mistaken, we said we didn't find any; we didn't say there wasn't any.

Ms. HOLTZMAN. No. I am going to read to you from your own digest on the first page of your report: "While the GAO concludes that no widespread conspiracy existed, it cannot absolutely rule out the possibility of undetected, isolated instances of deliberate obstruction."

I don't understand how you can possibly reach a conclusion when you have not looked at 17 cases, close to 30 percent of the pre-1973 cases.

Mr. STANTON. I want to point out we did look at all of these cases. We did not go through every document in these 17. They were large cases, some of them were out of the area. It would have been more difficult and it would have taken time. Of the 17 we did query the FBI, CIA and other agencies and we did get some information, enough to give the indication they were not too different than the other cases we were looking at.

We just had to make a decision to go another 3 months, to look at these cases or close it out, and we didn't think it would warrant going ahead and doing the extra work. This is not a statistical sample, it would have been a 100 percent review of cases prior to 1973. So we did look, as I said, at two-thirds of those cases in detail.

Ms. HOLTZMAN. Well, I would just simply say I thought we had reached an agreement last time you were here that you would concentrate your efforts on the pre-1973 cases, and yet you made a decision to do all of the post-1973 cases and eliminate or leave out 30 percent of the pre-1973 cases. I think that decision on your part was contrary to what I thought the understanding with this subcommittee was, which was that you would concentrate on the pre-1973 cases.

Mr. STANTON. We did.

Ms. HOLTZMAN. If there was a question of time, that you would leave out the post-1973 cases?

Mr. STANTON. For the cases after 1973 we had already gotten most of the information before the August hearings, before you told us that, and we had pretty much completed those. It was just a matter of going back and seeing the third agency documents on them, and they were easy to complete, and that is why we did complete them.

The cases we are talking about here were added after the hearings and we had to start from scratch on them.

Mr. LOWE. There is one other factor I think which we must mention, Ms. Holtzman; the subcommittee was urging us to get this report issued. We could have dragged it out 2 or 3 more months, and done all of those cases, but I think the subcommittee wanted this report.

Mr. EILBERG. Mr. Lowe, it took you 14 months to do what you did.

Mr. LOWE. It took us 8 months to get in the front door of some of these agencies, even with your help.

Mr. EILBERG. In 14 months, it's obvious we expected more than we got.

Go ahead; do you have anything else?

Ms. HOLTZMAN. Yes. I again would like an explanation of how you can make a flat statement that there was no widespread conspiracy when, in fact, you did not have access to the raw files of the CIA and the FBI, and when, you did not review all of the files of the pre-1973 cases.

Mr. LOWE. There were 252 cases. We only selected 111, so if we had reviewed 111 you could still ask that same question. I don't know what the answer is. That in the beginning we thought that

the subcommittee would be in a much better position with subpoena power to run this review than we would, and we offered to furnish staff to assist the subcommittee. Without the subpoena power, we have to take what kind of agreement we can get.

Mr. EILBERG. Mr. Lowe.

Mr. LOWE. Let me just make a statement.

Mr. EILBERG. No; I have to interrupt, Mr. Lowe. This is the first time in our handling of the matter with GAO there has been any reference at all to the use of subpoena power. You have never, and I defy you to show me any evidence of discussions that you were having any kind of difficulty.

We were being informed that things were going fine, you were just moving right along. Please don't talk about our use of the subpoena power, because very simply, that discussion never arose between us.

Mr. LOWE. I don't recall whether that specific discussion arose or not.

Mr. EILBERG. That's better.

Mr. LOWE. But due to the fact the committee has subpoena power and GAO does not, and that is well known—

Mr. EILBERG. I think we will have to recess and come back.

Ms. HOLTZMAN. I would just hope the witness would find an explanation for the conclusion they have arrived at in their document.

Mr. EILBERG. The subcommittee will recess.

[A short recess was taken.]

Mr. EILBERG. The subcommittee will come to order.

Before I yield the floor back to Ms. Holtzman for a minute, Mr. Lowe, I am more than a little disappointed in your last comment regarding our power to use the subpoena. I think you know, we certainly know we have that power, and it was our desire, and continues to be our desire, to avoid a confrontation with the Administration.

We specifically went the route of your agency with the cooperation of your boss and for you to take the position we had the subpoena power all of the time is completely obnoxious to me as chairman of the subcommittee. If, indeed, you want a confrontation, we will give it to you.

Mr. LOWE. I certainly don't want one, Mr. Chairman. If I might, though, I would like to go back to our August hearings. I don't remember what date, August 3, I believe it was.

Mr. EILBERG. Would you bring the microphone closer?

Mr. LOWE. Yes, sir.

At those hearings, I just refreshed my memory here during the recess, at those hearings about half of my statement was concerned primarily with our problems in getting access to records and, as a matter of fact, I pointed out it had been severely hampered by problems of delays in getting access to records, and I think it was only after those hearings when you, as the chairman of the committee, had representatives up here to testify from INS and some of the other agencies, that they really got sort of busy and tried to clear these third agency documents for us to look at.

Up until that time it had been a real tough row to hoe. We were having troubles, just delay after delay and after that I think the

agencies made a commitment, but they also made a commitment back in April in a meeting.

Mr. EILBERG. Which I attended and which I chaired.

Mr. LOWE. And it did not work out too well.

I think their intentions were good; it just did not happen, and after the August hearings we did start getting better cooperation and more access to the things we needed. That is the reason we were really having a problem.

Mr. EILBERG. Mr. Lowe, it's 1 whole year later, and you still maintain that because you didn't have cooperation until August that you have this relatively poor product to present to us. Is that really what you are saying to us?

Mr. LOWE. I am still saying that we had a lot of problems, and I don't really agree this is a poor product. I think if we had unlimited access we might know some things we don't know.

Mr. EILBERG. Well, if you want us to proceed with the subpoena route, perhaps we will do that, and perhaps we will have to have another confrontation with the Attorney General as another committee has had. But I don't think you want that and we don't want that either, so I would appreciate it if you not throw up the "bogey man" of subpoena.

Ms. Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Getting back to the 17 cases that were not reviewed, is there any possibility, Mr. Lowe, that the GAO could complete its work on those 17 cases?

Mr. LOWE. Ms. Holtzman, personally I think, to make sure you are satisfied with the work, if the chairman was willing, I would be willing to assign a man up here to the committee for a period of time to do those 17 cases.

Ms. HOLTZMAN. I think it would be useful considering the kinds of conclusions that have been drawn.

Mr. EILBERG. We accept the offer and can we have him tomorrow morning?

Mr. LOWE. Yes.

Ms. HOLTZMAN. Second, Mr. Chairman, I would also like to know——

Mr. LOWE. Yes, sir, close to that, anyway.

Ms. HOLTZMAN. Thank you, Mr. Lowe.

I am also concerned about why the GAO did not examine the reasons for the agencies hiring of these people, what exactly these alleged Nazi war criminals did for the CIA and the FBI, and how much money they received and so forth. Why didn't you look into this? If you assign a person to the subcommittee, could this person look into these matters for us?

Mr. LOWE. I don't think he will see that, whether he is working for the committee or not. That is just part of our problem. For example, if I may——

Ms. HOLTZMAN. In other words, you tried to find this out but the agencies would not provide you with that information?

Mr. LOWE. That is correct; yes. When the agency prepared a summary at the CIA and it, as I mentioned I think was more cooperative than I really expected, sometimes we don't get that

much, they prepared a summary document and we asked for a document supporting this.

The question that remains is what didn't they put in the summary. If it's not in the summary, you don't know what to ask for it. So we only know what we saw. We don't know what we didn't see.

Mr. EILBERG. Mr. Hall?

Mr. HALL. Mr. Lowe, I am perplexed by some answers you have given.

You stated a moment ago that it has taken 8 months to get in the front door of these agencies, I believe you made the statement.

Mr. LOWE. At least; yes.

Mr. HALL. You made another statement a moment ago in answer to Ms. Holtzman, "If we had had unlimited access to the records we could have done better."

Mr. LOWE. That is true.

Mr. HALL. You just stated that information supplied to you, you more or less had to take at face value as to whether it included all of the information that it should have included; is that not correct? Is that not a fair statement?

Mr. LOWE. Certain of the intelligence records yes; that is correct.

Mr. HALL. And then I am shown a Comptroller General report dealing with widespread conspiracy to obstruct the problem of alleged Nazi war criminals, and then I am told that there is no obstruction to make this investigation.

Now, I am asking some questions and I am going to follow with one other.

Why are you having 8 months of trouble, why is it taking 8 months to get, I am quoting you, "To get in the front door of these agencies," and what are the names of these agencies?

Mr. LOWE. The principal agencies would be the CIA and the FBI. As we testified in August, the INS files contain many documents, so-called third agency files, classified documents. Now, the INS under the classification rules cannot make those available to anybody else, only the agency that furnished those, the CIA or the FBI make those available, and at the August hearings last year we pointed out that despite some promises back in April representatives of these agencies and the INS, first the INS had to get the documents out of the files, or at least make reference to them and go to the other third agencies to find out if they could be released to us.

That was a time consuming process.

Mr. HALL. Why was it such a time-consuming process to get documents out of certain files and then go across Pennsylvania Avenue to the other agency for a discussion about relevant documents of interest? Maybe I am oversimplifying it, but why is it such a big deal if two of these agencies are trying to accomplish the same thing but no one ends up accomplishing anything?

Mr. LOWE. Well, I think it was not really until after the August hearings that the agency really got serious about putting some manpower and effort into it.

Mr. HALL. Which agency?

Mr. LOWE. INS. They got serious, the Commissioner testified up here in August right after I testified, and after that things went along quicker. But—

Mr. HALL. All right, as you testified.

Mr. LOWE. As Mr. Stanton points out to me, some of these files may contain a whole file cabinet, one file.

Mr. HALL. That's all right. How many people are working for your organization?

Mr. LOWE. For my organization? About 5,000 in total.

Mr. HALL. I see, and how many are working for INS?

Mr. LOWE. How many employees in INS?

Mr. TIPTON. About 10,000.

Mr. HALL. I wonder if there are not enough people between those two organizations to try and get a little information to the proper party and obtain some results. I have been a member of this committee for 3 years, and I have seen evidences of very little that has been accomplished, about all we do is talk to you people, talk to INS, asking about the same information over and over again. How long it has gone on before I got on the committee I don't know.

Why is there such an eternal struggle to get this from the people who have this information? Is there a conspiracy somewhere to prevent you from getting it?

Mr. LOWE. Not that I know of. That is just the way life is with the intelligence agencies. It's a tough road to go.

Mr. HALL. But when you are all trying to arrive at the same conclusion—

Mr. LOWE. They may not necessarily be trying to do the same thing we are trying to do.

Mr. HALL. Are they trying to keep you from getting legitimate information to arrive at a conclusion, whether some of these people can be prosecuted?

Mr. LOWE. No. I don't think so. I think they are very wary about intelligence type information. As a matter of fact, just recently the Attorney General was held in contempt for withholding information from the court on names of informants. The situation is very tough to get that kind of information.

Mr. HALL. We are not talking about the same thing Griffin Bell being put under an injunction, are we? Are we not talking about alleged Nazi war criminals?

Mr. LOWE. We are talking about essentially the same kind of intelligence information. As a matter of fact, for example, we have a request from another subcommittee of this committee to do a review of informants in the FBI, exactly the same thing that case was about. So, you can see the kinds of difficulties you are going to have getting information. It's not that we were not trying; if we had assigned all 5,000 people in GAO to get this information we would still have had to wait until they did their thing before we could see any of it.

Mr. HALL. That has taken 8 months.

Mr. LOWE. We kept the subcommittee staff informed; we had to really negotiate sort of the best agreement we could get with the Department of Justice.

Mr. HALL. All right; let me ask you this question:

Mr. LOWE. And the CIA people.

Mr. HALL. Have you or has your organization at any time gone through the throes of getting information from third organizations,

enough information to make a decision as to whether or not that particular case should be presented to a grand jury?

Mr. LOWE. No, sir, that is not our function.

Mr. HALL. What is your function?

Mr. LOWE. Our function at the request of this subcommittee was to try to find out if there was a widespread conspiracy to keep these alleged Nazi war criminals from being thrown out of the country.

Mr. HALL. Is it your testimony today that there is no conspiracy?

Mr. LOWE. The testimony is that based on almost \$200,000 worth of work, and a 1,000 man-days, and looking at about 100 cases in depth, and interviewing people all over the world and retired employees from INS and everything else, we found no evidence to show us that there was one.

That does not say there wasn't one, but based on the work we did, we did not find any evidence to tell us that there was a widespread conspiracy.

Mr. HALL. Was there any area you did not cover that may have told you that there was a conspiracy?

Mr. LOWE. Not that I know of.

Mr. HALL. You say that no evidence indicated a conspiracy, but you are not telling us there was not one?

Mr. LOWE. That is correct.

Mr. HALL. Do you have some doubt?

Mr. LOWE. We state right in our report that we didn't find any evidence in our work of a widespread conspiracy but that does not rule out the fact there might have been a small-scale one we didn't find.

Mr. HALL. I perceive some doubt in your belief as to whether there was or was not a conspiracy.

Mr. LOWE. On the individual cases that we went through we found nothing to that effect, and we went through a lot of them.

Mr. HALL. Why do you still say that does not rule out the fact there could be one?

Mr. LOWE. It's difficult for me to believe that of all of the people that our people interviewed, some 55 retired, ex-INS people scattered all over the country, all of the top officials, a lot of the investigators and we talked to hundreds and hundreds of people all over the world practically, many other people in the agencies, that somebody would know about it.

Mr. HALL. This is not a situation where we have so much bureaucracy that it just overlaps on top of each other and no one knows where the responsibility lies. Do we have a situation like that here with some of these agencies?

Mr. LOWE. No; I don't think so. I think in the beginning with respect to these alleged Nazi war criminals the INS was severely disorganized. As we pointed out in our testimony last fall, it was not until this subcommittee started raising Cain with INS that they made any movement at all.

First they went through an effort to try and centralize some of these files that are scattered throughout the INS offices all over the country, and at that time the alleged Nazi war cases were treated no different than any others.

They did try to bring those files together in New York City, and now last fall, in August, when the Commissioner was up here, he testified that he was setting up a special unit headed up by an attorney, reporting directly to the general counsel, to pursue these cases as a one target rather than scattered in all of these files. So I think it's just a matter of how the agency is organized and did its business in the old days, without regard to whether there was conspiracy or not.

The files were scattered all over the country and until they really pulled this unit together starting up in New York they really didn't have any inventory of how many allegations they had on this subject.

Mr. HALL. How many of these alleged war criminals have died of old age since this investigation started?

Mr. LOWE. Quite a few, I guess.

Mr. TIPTON. About 10.

Mr. HALL. How many are left, approximately, that you know about?

Mr. TIPTON. I could not tell you exactly how many are left. We know as of April there were 252 allegations.

Mr. HALL. How old are these people and what is the range?

Mr. TIPTON. Some of these have died; that is correct.

Mr. LOWE. That is another problem.

Mr. STANTON. They are in their midfifties, or older.

Mr. HALL. Attrition is going to take care of this problem.

Mr. LOWE. People carrying out prosecutions or deportation hearings are having the same kinds of problems, witnesses have died and disappeared, everything is 30 years old. As a matter of fact, I think our guys found two INS employees that were very ill and could not talk to us, not that they wouldn't. They just couldn't. So that is a state we are in with this thing.

I do think, if I am not mistaken, right now there are 13 active prosecutive cases, or let me clarify my language just a little bit here; 13 cases right now under legal proceedings.

Mr. HALL. That is the same number I think we had in August of last year when you were here. There has been no additions since that time? As I recall, I think you had 13 then.

Mr. TIPTON. That is correct; yes.

Mr. HALL. It's an interesting procedure, to say the least. I just hope they survive so you can continue your investigation.

I will yield back the balance of my time.

Mr. EILBERG. Thank you.

Mr. Lowe, at the top of page 4 of your report you refer to allegations of impropriety leveled against INS officials by a former service employee who had been investigating a substantial number of Nazi war criminal cases.

Your report goes on to state that two investigations into those allegations, one conducted by an INS internal investigations unit and another by the FBI, did not substantiate the employee's charges.

The language in the report seems to indicate that you relied entirely on the two Justice Department investigations into the allegations of the Service employee and accepted without question their findings that the allegations were baseless.

Is that an accurate statement?

Mr. TIPTON. No; we looked with regard to the allegations in any of the cases we reviewed as to whether they were true. We found no evidence.

Mr. HALL. What do you do, how did you go about investigating that subject?

Mr. TIPTON. As Mr. Stanton said, with regard to missing files and records?

Mr. EILBERG. The question deals with the top of page 4 in which there was a complaint, and my question was whether you simply relied upon the two prior investigations?

Mr. STANTON. No, sir, we used those investigations more as a starting point to see what had been done, and we talked to the people who had made the allegations, and we talked to their co-workers, some of whom were still in the agency, some of whom were retired, and we did the investigation ourselves to try to prove or disprove the allegation to try to see if there were substance to them, the specific allegations made by these two ex-employees.

Mr. EILBERG. Your conclusion was there was no basis for the allegations?

Mr. LOWE. We could not find any indication of a basis. As we said earlier, if files were missing, we could not tell that unless someone could identify a specific file, and then we would try to locate it and that didn't happen.

Mr. TIPTON. We found certain deficiencies with regard to INS operations.

Mr. EILBERG. All right, now, a few questions regarding the Carey report.

The GAO report makes mention of the independent study conducted by a former INS employee into charges of INS wrong-doing with respect to Nazi war criminal investigations. This evidently is the Carey report. Although it is noted that some of the background information and other material included in the report was exempted from that report, no specific references are given.

Could you at this time state precisely what material in your report was taken directly from the Carey report?

Mr. TIPTON. Just certain excerpts, Mr. Chairman.

Mr. EILBERG. Can you identify what excerpts?

Mr. TIPTON. Not at this time.

Mr. LOWE. We could do that, but not right here. Most of it is just some of the background information about the situation in the late 1940's and 1950's.

Mr. STANTON. On page 20 of our report we show what Mr. Carey's conclusions were; pages 19 and 20 of the report discussed his study and this is primarily the areas we talked about.

Mr. EILBERG. I didn't hear your last statement.

Mr. STANTON. This is primarily what we were referring to, the material on pages 19 and 20 of our report.

Mr. EILBERG. You accept the statements that appeared on page 20 in your report?

Mr. STANTON. Yes, sir, at the top of page 20, the first part is the conclusions that appeared in the Carey report. Also, we used the Carey report, to help identify some of the cases prior to 1973.

Mr. EILBERG. So you placed pretty heavy reliance on the Carey report, I take it?

Mr. STANTON. No, sir, we placed no reliance on it. We used it and we examined it and we followed up on some of the points he had made, but it did not have a bearing on our conclusions.

Mr. EILBERG. Well, on what point do you now disagree with or question on page 20 of the GAO report? You say you rely on them but you didn't rely on them and, frankly, I don't understand.

Mr. STANTON. We did not rely on his conclusions. We did our own work. We looked at his report for informational purposes only.

Mr. EILBERG. How do you react to each of the conclusions referred to on the top half of page 20 beginning with point I? "The volume of cases of alleged Nazi war criminals has never been more than minimal."

Mr. STANTON. This first point about the criminal cases, considering the total INS workload, that would be a true statement, although I think if there are 200 Nazis in the country it is certainly a significant number.

Mr. EILBERG. So, you agree with that? What about the next one? "The likelihood is slight that INS will have greater success in current and future investigations and proceedings against alleged Nazi war criminals."

Mr. STANTON. I think we would have to agree with that, too. That they had a recent case in Chicago where it appears to be successful, but how long will the appeals take, how long will it be before there is real success?

Mr. EILBERG. How about the next point? "The lack of credible eyewitnesses is likely to be a continuing problem."

Mr. STANTON. That is definitely a problem even today, still continuing to be a problem.

Mr. LOWE. And will be a worse problem tomorrow.

Mr. STANTON. Finding witnesses is difficult and it will become harder as time passes.

Mr. EILBERG. What about the next point?

The actual deportation of an individual is improbable because of lack of statutory authority, eligibility for administrative remedy, unavailability of travel document, introduction of private bills in Congress, litigation, and inability to travel due to poor health.

[See app. 2 at p. 178 for history of legislative provisions to exclude Nazis from the United States.]

Mr. STANTON. This has been a problem, but this committee has recently voted out a bill which should help in this situation to give INS more legal authority to go against some of these people.

Mr. EILBERG. You know, and I think we know, at this moment there are only two cases that are presently within even the parameters of that bill. Isn't that correct?

Mr. STANTON. I am not sure. Do you know about that?

Mr. TIPTON. No.

Mr. EILBERG. The INS told us that, so I will make that statement. So I don't know how much help this will be to you at this time.

Mr. STANTON. If you get two, that will increase their success rate 100 percent.

Mr. EILBERG. How about the next point? "Some cases that might have been investigated were not when the allegations were originally received."

Mr. STANTON. Yes, sir, that was a true statement. We reported the same thing, in fact. We found other cases in addition to the ones Mr. Carey mentioned.

Mr. EILBERG. What about the next point? "Some investigations did not appear warranted."

Mr. STANTON. That was his opinion. Our feeling was there was some investigation warranted on any allegation. The extent of the investigation may be the question here.

Mr. EILBERG. It's my impression that your opinions are very similar to the Carey report's conclusions, and as far as this member is concerned, the Carey report is as self-serving a document as I have seen.

Now, Mr. Lowe, probably the most striking characteristic of the Comptroller General's published report is its ambiguity and lack of clarity. Although I recognize the difficulties faced in avoiding the use of the names of individuals in the report against whom allegations had been made, I believe the report could have been written in a less confusing manner.

For instance, why weren't the names of the present and past agency officials interviewed in the course of the investigation used in the report? You say you questioned all of the INS Commissioners back to 1954. Yet you didn't even name their names in the report.

Mr. LOWE. I suppose we could have done that. Normally, we just list the top official in the agency. We will be glad to give the committee staff a list of everybody we interviewed.

Mr. EILBERG. We would like to have that, but the question still remains, why could you not put in that material right into the report so the public would know about it?

Also, Mr. Lowe, why were the cases treated on a group basis rather than an individual basis? Why couldn't we know individually what was the result of your efforts in each of the 90 cases or 111 cases you are talking about?

Mr. LOWE. We did make some effort, Mr. Chairman, and I think that probably does contribute to the confusion. But we did make some effort. Some cases are so readily identifiable that you might as well put the person's name on that if you discuss the case by itself. We did make some effort to avoid that.

Mr. EILBERG. So you just abandoned the idea of identifying any of the 90 cases or 111 cases?

Mr. LOWE. Yes.

Mr. EILBERG. Which gives us very little help, of course.

Mr. LOWE. Of course, we can sit down with you or your counsel in private and go through the report and tell you exactly which ones we are talking about.

Mr. EILBERG. Would you do that?

Mr. LOWE. Certainly.

Mr. EILBERG. Miss Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

I want to go back to the point of the lack of information about what these people did for the agencies by whom they were employed.

Do you have that information as to how much these people were paid by the CIA or FBI and what they did for them?

Mr. LOWE. No, we do not.

Ms. HOLTZMAN. You don't have that information?

Mr. LOWE. No, Ma'am. My understanding is that, I don't know what they are willing to reveal, but the CIA indicated to us that they would be prepared to discuss these cases in executive session.

Ms. HOLTZMAN. Did you make an effort in preparing this report to get the amounts of money that these people were paid, and find out exactly what they did for each one of these agencies?

Mr. LOWE. I think I stand corrected on that. Mr. Stanton tells me we did not, no.

Ms. HOLTZMAN. You did not? You didn't think that was relevant to the scope of inquiry, or is there any particular reason you didn't try to find this information out?

Mr. STANTON. In our discussion at the CIA they did indicate to some extent, various ones the type of duties they were performing and what they were doing. But it was not part of this review to analyze the use of these people. We were concerned—

Ms. HOLTZMAN. What did the CIA say they were doing?

Mr. STANTON. Some of them, I would rather let the CIA answer that. They agreed they would respond on all of these cases in executive session to the committee, and there is classified information. I just wouldn't know how many I could say.

Ms. HOLTZMAN. They told you that what these people were doing was classified information?

Mr. STANTON. Everything they gave us was classified.

Ms. HOLTZMAN. Everything they gave you was classified?

Mr. STANTON. Right. The information we have in the report, they did declassify what we could report.

Ms. HOLTZMAN. Was how much money they paid them classified?

Mr. STANTON. We didn't ask that question.

Ms. HOLTZMAN. Could you ask that question?

Mr. STANTON. We could ask it.

Ms. HOLTZMAN. If you are assigning somebody to look at the other 17 cases, I think it would be extremely useful to find out how much money these people were paid, how long they were employed, and what they did. To the extent that is available, we would like to have it.

Mr. STANTON. None of them have been employed in recent years. We have the last date in the report. I think it was 1965 the last time the CIA said it used any of these people.

Mr. EILBERG. Would the gentlelady yield?

Ms. HOLTZMAN. Yes; I will be happy to yield.

Mr. EILBERG. Mr. Stanton, is it not a fact you had access to the raw files of the CIA?

Mr. STANTON. After they prepared the summaries, they showed us any documents we requested to support those summaries. After the documents had been sanitized and they removed names, confidential sources.

Mr. EILBERG. Is it not a fact those CIA files indicate how much money was paid to these former Nazis in line with Ms. Holtzman's question?

Mr. TIPTON. We didn't ask for any of those documents.

Mr. STANTON. We didn't ask for those documents. It might have been in there.

Mr. EILBERG. All right.

Ms. Holtzman?

Ms. HOLTZMAN. Thank you.

I take it the CIA said that one of the reasons it hired these Nazi war criminals, even though it knew the allegations against them, was that, "There was an acute shortage of intelligence on the Soviet Union."

They were hiring these people as experts on communism in the Soviet Union. Were any of these alleged Nazi war criminals scholars?

Mr. STANTON. Scholars?

Ms. HOLTZMAN. Yes.

Mr. TIPTON. The one was supposedly an expert on the Soviet Union.

Ms. HOLTZMAN. I didn't ask you whether he was supposedly an expert; I wanted to know whether this person was a scholar.

Mr. TIPTON. Not to my knowledge.

Ms. HOLTZMAN. Mr. Chairman, I must say I find some similarities in the use of the classification by these agencies to what we found in the Nixon Administration in the use of national security.

National security can be used to hide a lot of things. I don't understand what people who engaged in mass murder could do that has anything to do with the well-being of this country, and I find it very difficult to understand why the CIA and the FBI or any other agency would throw a cloak of secrecy over their connection with these people.

Mr. EILBERG. I think, in response to that, we will be calling the CIA and going over that subject minutely, and I assure the gentle lady that the subcommittee and staff, and I am sure including herself, will be prepared to pursue vigorously this question of security with the CIA.

I might just add, Mr. Stanton, you did have the opportunity to see the original files of the CIA and you were given whatever copies or records, whatever records you had asked for from the CIA as far as any of these cases are concerned.

Mr. STANTON. They did show us any documents we requested to support the summaries, yes, sir.

Mr. EILBERG. And you did not ask to see the entire file of any particular, individual CIA file?

Mr. STANTON. No, sir; we did not.

Mr. EILBERG. You accepted the summaries?

Mr. LOWE. We couldn't have gotten that. But the important thing, I think, Mr. Chairman, to bear in mind is we could only ask for the documents supporting the summary they gave us. We do not know what they did not put in the summary. You wouldn't know what to ask for, you see, so the summary document is what you had to go by.

I might make one other point: We in the General Accounting Office do not really classify material. We are just bound by whatever classification is assigned to it.

Mr. EILBERG. Did you consult the security files of CIA on these people?

Mr. STANTON. Yes, sir; we did.

Mr. EILBERG. The original files?

Mr. TIPTON. There was one, I think.

Mr. EILBERG. What?

Mr. TIPTON. We may have asked for one that came out of the security files, yes.

Mr. EILBERG. Mr. Hall, do you have any further questions?

Mr. HALL. What you are saying in essence, Mr. Lowe, is that your organization, GAO, takes whatever information is supplied to you by these third-member organizations, I was going to say Third World, but I mean CIA and FBI. You take whatever they give you and you have to take that at face value.

Mr. LOWE. I guess the choice we have is to get nothing or something, and we do the best we can.

Now, normally in classified information when we are doing normal work, not dealing with intelligence matters or something like that, we generally don't have any problem in getting access to classified documents.

For example, I worked on the AID program for many years, and we always had a little problem, but we eventually got them all.

Mr. HALL. I understand you have certain classified material and we should have it. But, as I understand what you said a moment ago, that the information that is generally supplied the GAO by the FBI, the CIA, and these other agencies, you must take it and must rely upon it as they have supplied to you.

Mr. LOWE. It varies. Now, we do have a very lengthy agreement which was worked out over a period of about 2 years with Director Kelly of the FBI pointing out how we will get access to certain information. Certainly it's not complete access to their investigative files. On some of the work we have done it is sufficient information for us.

For example, in a normal review of say bank robbery operations by the FBI it would not be necessary or even desirable for us to see the name of an informant who gave a tip, but we do see what we need to see in most cases. When you get into the intelligence area that is an entirely different ball game, and it's much tougher.

Mr. HALL. Is there any information you need that this subcommittee might be of assistance in helping you get to complete whatever reports you now have ongoing?

Mr. LOWE. I don't think so. I think the point the chairman made a moment ago is a very significant one, that about having the CIA up here to discuss these operations of their own. As Mr. Stanton said, we are not trying to withhold information, but when everything you have looked at there is classified we don't know exactly how much we can say.

Mr. HALL. I understand that.

Mr. LOWE. And I think the CIA has expressed a willingness to come up here in executive session and discuss these cases in a fair amount of detail.

Mr. EILBERG. Would the gentleman yield?

Mr. HALL. Yes; I yield to the chairman.

Mr. EILBERG. Mr. Lowe, how many files of alleged Nazi war criminals in the possession of CIA did the GAO look at, in part or in whole or whatever?

Mr. STANTON. None in whole.

Mr. EILBERG. None at all?

Mr. STANTON. No, sir. We did not have direct access to any file at the CIA or the FBI.

Mr. EILBERG. Mr. Lowe has just said, I believe, that you had access to materials that were referred to in the summaries.

Mr. STANTON. Yes, sir, right, but that was, we asked for a document supporting an entry in the summary. They showed us that document, with certain information blacked out.

Mr. EILBERG. How many files did you have access to in any way, CIA files?

Mr. STANTON. We had access to 22 files at the CIA. Of the 111 names we gave them, they had information on 22 which they made available to us to some extent.

Mr. EILBERG. And you went through 22 files to some extent, or they made available to you?

Mr. STANTON. A very limited extent, yes, sir.

Mr. EILBERG. Mr. Hall, did you wish to proceed?

Mr. HALL. I yield back the time.

Ms. HOLTZMAN. Would you yield for a second, Mr. Hall?

Mr. HALL. Yes, I yield to the gentlelady from New York.

Ms. HOLTZMAN. Thank you.

I notice on page 33 you indicate that one person who was employed by the CIA came to the United States with the concurrence of the Departments of Justice and State. Now, how high up did approvals come from for this person's entry into this country?

Do you have any evidence, for example, that National Security Council knew about the CIA's employment of any of these people or the actions of the Justice Department or State Department in this case?

Do we know whether the approval went through anybody at the White House; do we know if an Attorney General was involved? At what levels were the decisions being made in these cases?

Mr. TIPTON. All we know, Ms. Holtzman, is that the Attorney General and the Secretary of State had final authorization; they signed off, but there again we don't know who might have signed it. I mean, it's signed by the Attorney General with the approval and also by the Secretary of State.

Now, in talking to those people they know nothing about any kind of allegations. It's just an approval, normal approval process.

Ms. HOLTZMAN. You are saying on page 33 that there is one case where there was the concurrence of the Department of Justice and State Department, and that the Attorney General and Secretary of State actually signed documents allowing this person to come to the United States?

Mr. TIPTON. I believe that is so, but I can furnish it for the record.

[The requested material follows:]

INS records show that in the case mentioned on p. 33 of GAO's report, the CIA Director sent the INS Commissioner a letter stating that he approved entrance of the subject into the United States for permanent residence pursuant to the authority granted in Section 8 of the Central Intelligence Agency Act of 1949. The CIA Director recommended that the INS Commissioner approve such entry and present this matter to the Attorney General for his approval. The CIA Director was advised by the Deputy Attorney General that he and the INS Commissioner concurred with the CIA Director's recommendation. A State Department official told GAO that the Department had also concurred with the decision to permit entry of the subject.

Ms. HOLTZMAN. Is that true?

Mr. TIPTON. We can check that out to be sure. I am almost sure, and in taking a look at that there is that approval.

Ms. HOLTZMAN. Did it go higher than the Secretary of State? I am asking for the highest level.

Mr. TIPTON. We didn't find anything higher than that.

Ms. HOLTZMAN. What about the other cases?

Mr. STANTON. On this particular case, we found no evidence of an allegation having been made against that individual until after he had left the country. At that time there were no allegations we could determine. If there had been any we didn't run across them.

Ms. HOLTZMAN. This was a high German official during the Nazi regime, isn't that correct?

Mr. STANTON. Yes, Ma'am.

Ms. HOLTZMAN. That fact was known to the officials in the United States at the time he was permitted to come here; isn't that correct?

Mr. STANTON. Yes; he would have been.

Ms. HOLTZMAN. Would you be able to tell me the highest level of decisionmaking with respect to the employment of the people in the other cases you reviewed?

Mr. STANTON. The employment of them? No; we do not know.

Ms. HOLTZMAN. Have you checked the National Security Council records? Have you checked any other records outside of these agencies to determine whether there was any political involvement?

Mr. STANTON. Of the people hired by the CIA?

Ms. HOLTZMAN. Yes, or the FBI, or the Department of State?

Mr. STANTON. We don't even know the names of the ones the FBI had working for them, and the ones working for the FBI were not paid, according to the FBI. The ones on the CIA, we did not go beyond the information they gave us, that they used these people.

Ms. HOLTZMAN. Thank you.

Mr. HALL. I yield back the balance of my time.

Mr. EILBERG. Mr. Lowe, you have said or Mr. Stanton has said, repeatedly this morning, that in those cases for which the CIA prepared summaries that you had access only to documents in those files that pertained to facts in those summaries.

Is that correct?

Mr. LOWE. In the CIA, that is correct; yes.

Mr. EILBERG. Now, I call your attention to and ask you what you think of this. I have been informed by committee staff that the CIA has said the subcommittee may look at any of the files in toto that the CIA had prepared any summaries on. Now, does that surprise you in any way?

Mr. LOWE. It certainly does, yes.

Mr. EILBERG. In other words, the GAO did not have that access, but our staff did have the access, and you would have us still believe that you did not have access to those files?

Mr. LOWE. No; we didn't have access, and I am surprised—

Mr. EILBERG. Do you dispute the statement of fact regarding my staff's access to this material?

Mr. LOWE. Certainly not. I can only wish them luck. I wish we had had that.

Mr. EILBERG. It does raise questions in our minds as to the intensity with which GAO pursued these matters. If he got permission, I do not understand why you would not have gotten permission.

Mr. Lowe, the report, the GAO report indicates that a number of alleged Nazi war criminals had various relationships with the CIA, FBI, and Departments of Defense and State. These relationships included assistance in gaining admission into the United States and employment by these agencies.

The report indicates that evaluation of the merits of such employment or assistance was not conducted by GAO. Why were not such evaluations conducted?

Mr. LOWE. I don't think that that was our purpose, to find out whether or not the guy was worth his money that was paid to him.

Mr. EILBERG. It was your purpose to find out why 30 or 35 years had gone by and nothing had happened. You did not think this was a relevant fact?

Mr. LOWE. No; I don't see where we could evaluate whether or not one of those persons was worth his money or not to some intelligence agency.

Mr. EILBERG. You did not consider the employment of an alleged Nazi war criminal during that period and covering up of him, if it did indeed occur, as a potential reason for the failure to prosecute or move on these cases?

Mr. LOWE. That is exactly what we were looking for, and we did not find anything that convinced us that that had happened and there might be something there, but we didn't find it. As a matter of fact, the agency specifically pointed out to us they did not interfere with any INS actions against these people.

Mr. TIPTON. In some cases also the allegation came after.

Mr. EILBERG. According to the CIA's own case file summaries, 22 alleged Nazi war criminals were either contacted, employed, or assisted in entering the United States by the CIA. The CIA cited as justification for that action the "acute shortage of intelligence on Soviet intentions and developments in Europe in general." Further, the agency stated in no case did it make use of anyone against whom allegations of war crimes were "well-founded."

Did they indicate to you who determined whether a particular set of charges of war atrocities was well-founded?

Mr. STANTON. The people that had been screened and entered the country by other agencies, the CIA accepted that as a fact, that there were no well-founded allegations. They did their own security investigations to see if these were people they could or should use, but they did not question the fact of whether they had committed atrocities when the people had been approved to enter the country by other agencies.

Mr. EILBERG. What agency would know better than CIA whether the war crimes were well-founded? I don't understand what other agencies would be better informed.

Mr. STANTON. This would be the refugee organizations that were screening the people coming into the country.

Mr. EILBERG. Where did you get this information?

Mr. LOWE. This was told by CIA.

Mr. EILBERG. They told you they relied on refugee organizations and others; not as a result of their own investigation?

Mr. LOWE. Right; they said they did not go and investigate these types of allegations. They might have seen reference in the newspaper articles to some of these people; they did not follow up on that point.

Mr. EILBERG. If they had known of the allegations would they have inquired into them?

Mr. STANTON. They would have if they had a well-founded basis for the allegations. They did not consider the fact someone had made an allegation the final step, the final decision.

Mr. EILBERG. Did you conduct any independent reviews of any of these determinations?

Mr. STANTON. No, sir.

Mr. EILBERG. Did the INS files of these 22 individuals contain any reference to CIA involvement?

Mr. TIPTON. Would you please repeat that?

Mr. STANTON. There were some CIA documents in some of these files where the CIA had referred information to INS, usually at INS' request, but I don't think there was anything in the INS records that showed these people had worked for CIA.

Mr. EILBERG. Nothing at all for any of the 22?

Mr. TIPTON. Yes, for one, the one that was assisted into the country did show up in the INS files.

Mr. EILBERG. Were any of these files the same files in which INS investigation had been terminated without apparent justification?

Mr. TIPTON. Would you repeat that, please?

Mr. EILBERG. Sure. Were any of these files the same files in which INS investigations had been terminated without apparent justification?

Mr. TIPTON. Not to my knowledge.

Mr. EILBERG. You take the general position that INS is not guilty of any oversight or of overlooking anything?

Mr. STANTON. No, sir, we did not take that position. The report clearly states we feel they were very deficient in many of these cases, but we feel, I do not feel it was a conspiracy or deliberate attempt to obstruct. There was no indication of that. It was sloppy work.

Mr. EILBERG. According to the 47 FBI summaries provided in the course of your investigation, two alleged Nazi war criminals had confidential relationships with that agency and four had been mentioned in relation to other FBI investigations. Would you also tell us specifically in what context the four names were mentioned in relation to other FBI investigations?

Mr. STANTON. No, sir; we don't have that information.

Mr. EILBERG. How do you account for that?

Mr. STANTON. The FBI would not give us that information. They would not even give us the names of the people they had these relationships with. The other investigations they felt were not pertinent to this particular review. They said the names did appear in their files, but only in connection with something else that they were looking into.

Mr. EILBERG. The summaries say that the 47 summaries talked about confidential relationships with two alleged Nazi war criminals, and that four were mentioned in those summaries in relation to other FBI investigations; is that not a fact?

Mr. STANTON. Yes, sir, there could have been a case where FBI was investigating someone else and had talked maybe to this person as a potential witness, not necessarily they were involved in another crime, but we don't know the details.

Mr. EILBERG. Did you attempt to get the details?

Mr. STANTON. No, sir.

Mr. EILBERG. Don't you think those details would be important?

Mr. STANTON. It would not have been available to us. The agreement we had with them for getting this information would not have permitted us to go. We did go beyond the summaries asking questions and they gave us some additional information outside of the summaries, but this type of information would not have been given.

Mr. EILBERG. What was the final disposition of those 6 cases that appeared in the 47 FBI summaries?

Mr. STANTON. I don't even know who they were. They did not give us the name of these six. They only gave us the general information of the people on our list of 111, they said 2 were in this category, 4 were in that category. They did not identify them.

Mr. EILBERG. Did you ask if the investigations had taken place or were continuing in those six cases?

Mr. STANTON. That was—yes, sir, that was the information we were asking. And the people they were using they would not be having an investigation of. I don't know whether these were people that INS is currently investigating. It could be, but we would not know that.

Mr. EILBERG. So you don't know whether or not there were investigations of the six or not, even though they say they were dealing or that they were involved with six of them.

Mr. STANTON. Yes, sir, that is right; we don't know.

Mr. EILBERG. Can you tell us more about the facts surrounding the waiving of entry clearance with respect to the individual described on pages 37 and 38 of the report? I am referring now to the Department of Defense.

The report indicates that the entry of this alleged war criminal was accomplished through the collaboration of an Army intelligence agent and State Department Embassy officials.

Mr. TIPTON. We found that in the Immigration files in the cases we reviewed which made reference to the Department of State. It was a memorandum more or less summarizing what had happened and how the individual had entered the country. And we corroborated this back through the Department of Defense and also the Department of State.

Mr. EILBERG. Did you talk to the Army about that case?

Mr. TIPTON. Yes, we did.

Mr. EILBERG. What did they tell you?

Mr. TIPTON. They told us more or less the same thing that was in here, that is what happened.

Mr. EILBERG. Would you repeat what happened again? I am not clear.

Mr. TIPTON. It was an individual that had contact with an Army intelligence officer, and he, through the Department of State, got assistance for him to enter the country. He was found within a month and subsequently arrested and subsequently deported.

Mr. EILBERG. Were you able to discover the motive behind the Army official's actions, why he provided that assistance?

Mr. TIPTON. It was more or less the individual in question was the source of information, I think, with regard to Communist activities.

Mr. EILBERG. Regarding the Department of State, with respect to the senior official of the German Foreign Ministry during the Nazi regime who had been aided into the United States by the CIA, the report notes that this individual had also served as consultant to the State Department on Soviet affairs.

Although allegations against this individual were not received until after such employment, did you inquire of State Department officials whether the individual's high position within the Nazi government gave them reason to believe he may have been involved in war atrocities?

Mr. TIPTON. To our knowledge, the agencies involved had no knowledge of any allegations.

Mr. STANTON. This particular person, they felt, because of the job he had, his position in the German Army, that he would not have been involved.

Mr. EILBERG. Did you discuss that with the State Department?

Mr. TIPTON. Yes.

Mr. STANTON. Yes, sir.

Mr. EILBERG. Mr. Lowe, I think we have gone through some of the high points of the report anyway, and I think our disappointment is obvious to you, and quite possibly that same disappointment is felt by you also. It is just regrettable that so much time and man-hours and money was expended and we have so little to show for it.

Mr. LOWE. It is a frustrating experience, Mr. Chairman. Normally, we have relatively free access to the stuff we work on, and when you get into one of these situations, it can literally turn your hair gray.

Mr. EILBERG. Except I have difficulty, Mr. Lowe, quite frankly, in following you. It just baffles me to think that my own subcommittee staff can have access to materials that you cannot. I have to think that some people perhaps did not try hard enough.

Mr. LOWE. I would not agree with that. We tried awfully hard. First, we tried working out things in an oral agreement with them and finally we got down to a signed treaty. I personally was involved in agreeing to that. It was discussed at the highest levels in the office; it was just the best deal we could make. And, as I have responded to one of the other subcommittees here in talking about

the FBI, they have guns and we don't. I mean that is about where it comes down to.

Mr. EILBERG. All right.

The witnesses following you will have specific comments to make on your report. They were all interviewed by your investigators and some of their observations were presumably included in your report without attribution.

You may wish to keep yourself or one or more of your associates available while these statements are being made.

It might be very interesting to hear your responses after these statements are made. Again, I am not directing you or any of the others in particular to stay here. You may wish to respond in writing, but I think being present might help bring this series of hearings to a more concrete conclusion.

Mr. LOWE. If it's OK with you, Mr. Chairman, we will leave one of our staff members here to take some notes, and if necessary we will respond in writing. But, Mr. Stanton and I have to get prepared to testify tomorrow morning on the FBI, and if that is OK with you, we will leave, but we will leave somebody here to take some notes.

If I understand correctly, we are to assign one of our staff members to you as soon as possible. We will talk to your staff and work that out, and to pursue whatever information you want on these other 17 cases.

We already have some of that information; it is just we did not do the detailed thinking on these that we did on the other cases.

Mr. EILBERG. Before we conclude, Ms. Holtzman has the floor.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman.

I just have one question on the case that you discuss on pages 38 and 39 of the report.

This has to do with the individual who was given a clearance by the State Department to come into this country, and then after being here for a very short time was arrested and deported.

Now, you say in your report that the Department of State allowed this person to come into the United States and granted a visa based on a recommendation by another Federal agency. Further, that the other Federal agency was aware of this person's wartime involvement prior to his entry.

Can you tell me what the other Federal agency was that you are referring to, and how they justified their recommendation, knowing of the person's wartime activity?

Mr. TIPTON. It was Army intelligence agency. And they felt—

Ms. HOLTZMAN. What particular Army intelligence agency?

Mr. TIPTON. It was a CIC official.

Ms. HOLTZMAN. CIC. And what justification did they give, knowing this person's wartime involvement? I presume that means the commission of atrocities?

Mr. TIPTON. Not necessarily. There was some evidence of atrocities, yes.

Ms. HOLTZMAN. There was some evidence of atrocities. Nonetheless, they recommended this person's admission to the United States?

Mr. TIPTON. He was coming in for a short visit; that's right.

Ms. HOLTZMAN. How did they explain this recommendation?

Mr. TIPTON. Here again, we can only go on what was in the record and what was written up in this case.

Ms. HOLTZMAN. Did you interview any case officers or did you interview anyone responsible for his admission?

Mr. TIPTON. No one could even remember back to that specific case.

Mr. STANTON. This all happened in the late 1940's, and the man was in the country and out within basically a few months.

Ms. HOLTZMAN. The issue is not really whether he was in or out for a short period of time, but that a Federal agency, knowing of atrocities, would recommend his entry.

Mr. STANTON. Yes. There was little information available, and that was our problem.

Mr. EILBERG. Thank you, Mr. Lowe. I am sure we will continue to be in contact, and we do appreciate your efforts.

Mr. LOWE. Thank you, Mr. Chairman.

Mr. EILBERG. Thank you.

Our next witness is Mr. Charles R. Allen, Jr.

Mr. Allen, do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ALLEN. Yes, sir.

Mr. EILBERG. Thank you.

Mr. Allen, it's a real pleasure to have you here this morning.

As you know, we met some time ago on the David Susskind show, and I was much impressed then with your knowledge and work in this field, and I have your résumé which refers in considerable detail to the many articles you have written on the subject and the kind of research you have done.

Truly, you have got to be an outstanding person in terms of knowledge of the subject, perhaps one of the few in the country. We look forward to your testimony with some considerable interest.

If possible, we would like you to focus in on the GAO report as much as possible, and help us in identifying weaknesses in that area. We welcome, of course, any other contributions you may wish to make.

STATEMENT OF MR. CHARLES R. ALLEN, JR., AUTHOR AND SPECIALIST ON ALLEGED NAZI WAR CRIMINALS IN THE UNITED STATES

Mr. ALLEN. Thank you very much, Mr. Chairman.

I want to also express my appreciation to the subcommittee and also my commendation of the work of the chairman and Ms. Holtzman and other members of the subcommittee and the staff.

I can say that within the historical confines of this issue, without this subcommittee, it would be languishing in our moral debt, so to speak, without your work.

As you indicated, I myself am a free lance author and journalist, former senior editor of the Nation, presently contributing editor of The Churchman which is, incidentally, the oldest continuous publication, founded in 1804, in the country.

As a matter of fact, one of its charter editors and subscribers, founder, was Thomas Jefferson. Appropriately enough, this morn-

ing right before the hearing I took a jog over to the Jefferson Memorial just as a communion with the proper background, so to speak, before we go into our subject matter.

I also would like to state, if I may, sir, that while I understand and even concede the merit in the position of the subcommittee and the rules of the House, apparently as to the nonspecification of individual cases by name, I must respectfully but most firmly, as an independent writer and investigator, researcher and author, I must except from that position. On the other hand, I realize that while I am here to be of any usefulness I possibly can to the issue, I will abide by your rules of procedure.

Of course, I know you understand that they, so far as myself and my work are concerned, are in no way binding.

I also would like to further state, because I do believe that within the various questions affecting conceptually such questions as the matter of free speech and the first amendment, particularly, that normally I would not appear before a congressional panel, except perhaps under subpoena; because I do believe, fiercely, in the independent integrity of a writer, particularly one such as myself, because I happen to be most of the time, in an adversary position vis-a-vis the Government. Ever since I have been working as a journalist and writer, since 1951, this has been so.

I say this rather broadly, as a matter of fact. One of my works in another field "Concentration Camps, U.S.A.," has been acknowledged by both sides of the congressional aisle in the debates of 1971 as a basis for the ultimate repeal of title 2 of the 1950 Internal Security Act, which I think was one of the plagues of our struggle toward a continuing and ever higher and broadening democracy.

The same is true with the Nazi war criminal issue. It is symptomatic of the struggle in which our society, our government and our people are engaged while seeking a higher, a more efficacious form a more effective form of democracy for all people regardless of who they are.

I would like to point out that my remarks will essentially consist of three areas, if I may. Of course, I assume the rule of the subcommittee is you may break in at any time, although I would think it might prove more efficient if you did allow me to go on and then perhaps the questions would follow.

As I understand the purpose of the subcommittee, it is to gain knowledge historically of what happened in the past; particularly the Government role in the question of Nazi war criminals, alleged Nazi war criminals living in the United States. You are interested in this historical past, and I am prepared to, begin by, reviewing what has already been published in my own writings and activities in this area. Second, the largest area of my testimony will consist of my own study of the utilization of accused Nazi war criminals by various Government agencies, which I will get to in the second part.

The third part really is a summary statement and prayer of my own observations.

Without further ado, I would like to indicate that my first section of the materials has to do with materials which I myself have published. As I understand it from talking with your staff, you are

preparing a factual, historical primer, so to speak, for the use of the public at large, which I think would be very useful.

These include the following materials, and if I can just very quickly identify them: The full text of my work in 1963 entitled, "Nazi War Criminals Among Us," originally published as a series of articles in the national publication, Jewish Currents, and brought out as a 92-page booklet. Then follows a series of articles from various publications for which I have written such as Jewish Currents, The Nation, Newsday, Saga, and others, which touch on this subject matter and deal with specific cases, although I will not even repeat their titles at this point because of the injunction.

Mr. EILBERG. Mr. Allen, may we have copies of those articles?

Mr. ALLEN. I have them for you and, with your permission, I will give them to you for the record.

Mr. EILBERG. We will take them for the moment for the committee files, and we will see whether they should be in the record.

[The articles referred to above were submitted and are being maintained in committee files.]

Mr. ALLEN. I have brought them for the subcommittee's use in its work, and also some representative materials which deal with reactions to my own writings from others; that is, from the national media, from various community organizations.

I know there are certain community organizations here at these subcommittee hearings which I want to commend, by the way, such as the Concerned Jurists and Lawyers from Philadelphia, and also Concerned Educators.

They will be reflected in this material which might be of some historical value for your own study.

Let me proceed with a bit of the historical background. First, in 1962 when I was told that there were alleged Nazi war criminals living in the United States. I, at that time, was finishing up another book, "Heusinger of the Fourth Reich: The Step-by-Step Resurgence of the German General Staff" which ultimately throughout the world sold over a million copies. Frankly, when I heard this—and it also was initially asserted that they were employed by agencies of Government—I frankly was incredulous.

I did not believe it. But, then I found that documents which were given to me, I independently corroborated. Let me add, not through Eastern European or Soviet sources, but largely through our own Nuremberg war crimes files archives and largely through the data discovered and developed by American prosecution teams at various Nuremberg war crimes trials. So let me make it emphatically clear that neither the motivation nor the initial source-impetus, so to speak, had any thing to do with those Soviet sources in the beginning, nor ultimately in the end.

The sources, it's disappointing perhaps to those who would impugn my studies and writings, are very American in terms of their discovery and development.

I have here two materials which I think might be of use to the subcommittee in furthering this issue. Once I had done this series which came out as "Nazi War Criminals Among Us," I listed 16 individuals accused of genocide during the World War II period; 16 as a matter of fact, of the very 17 that Ms. Holtzman used in her questions to and remarks about the GAO report this morning.

I was very exercised by what I found; and, incidentally, of the 16 I looked up and interviewed virtually all of them. By virtually all of them I mean 14. So these were not hearsay, these were not second hand. I did what was proper for an investigative journalist. I tracked them down, saw them, interviewed them, one way or another I proved my case.

The editors and myself—the editors of Jewish Currents—realized and agreed that this was such a momentous issue and was so important to our Government, to our people and to the future of our democracy, that even before publication we would indicate to the proper governmental sources what I had discovered.

Now, this is very unusual, because most publications would not take such a step; they would simply say, we will let it fly and consequences can go also fly.

Verbally, in November of 1962, I contacted the Justice Department; I contacted the State Department; and I contacted the Immigration and Naturalization Service—and told them what I had discovered, what I had proved, and offered them an opportunity to look at these materials. Not in terms of any editorial reaction, because I could not care less what their editorial reaction was or is, but as a source of data and information and further questioning, because I wanted to question them very closely and, indeed, as you will see, I did.

But, this was not to be. I was verbally denied any kind of positive response by those three agencies. Then, on December 27, 1962, I sent a long letter to these agencies, the Secretary of State, Dean Rusk, to the then Attorney General of the United States, Robert F. Kennedy, and also the INS.

The responses were characterized by protracted delays. I had sent the letters on December 27, 1962. You will see that the responses, at the earliest, came at February 20 through March and April of 1963.

I would say that this is a rather protracted delay for such inquiries, particularly in the view of the urgency of the matter.

I further gave my own analysis of these so-called replies, which I don't consider replies at all, and I will characterize them as evasive on the one hand and factually incorrect on the other. I published an article entitled, "Our Government Replies to Charges" which, incidentally, sounds like an echo of some of the questions and some of the nonresponses that were elicited from various Government agencies during the GAO efforts.

Now, these materials—of which I will not go into the details—are here for the subcommittee's use, you may have them and, with your permission, I will enter them into the record.

I would like to point out that in two cases with the State Department, I found that they evaded questions of usage and utilization of these accused Nazi war criminals and, of course, I published them and, of course, they stand to this day.

I can tell you this, that the GAO reports reference—and we will go over it in detail in part two of my presentation here this morning—the reference to the so-called expert on the Soviet Union was actually a reference to an individual who was the official liaison between Ribbentrop, later hanged at Nuremburg, and the Foreign Departments and the Einsatzgruppen.

Einsatzgruppen, as you may know, were four squads, A, B, C, and D, who ranged the Russian front from north to south between 1941 and 1943 by design to Operation Barbarossa, which was the Nazi plans for the invasion of the U.S.S.R., conceived as early as 1937 by the German General Staff. I can tell you that this individual was the liaison between the Nazi Foreign Office and the Einsatzgruppen. He was also wanted by various members of the Allied War Commission as a war criminal.

His usage by the U.S. State Department did not end in the early 1950's, as we shall see. On the contrary, it continued through the 1960's as I had published most of my materials on this individual in the early 1960's. I must say once I had written my materials in the 1960's that seemed to be the end of the question of Nazi war criminals in the United States because, very frankly, and this is of historical import, I believe, in assessing this question, because it's a complex question, it's a subtle question, there are no easy answers, there are not even easy questions. But, in the mid-1960's that seemed to be about the end of it.

There was no outcry in the United States as a whole, there was no cry of rage, there was no indignation in the halls of Congress, there were no concerns expressed in our Government. As a matter of fact, the last I heard from the Government was a curt letter of April 1, 1963 and I don't know if that day has any import or not, but April 1, 1963, when in response to my third letter asking for data, Robert Kennedy's Justice Department said we have your letter, and these are its exact quotes: "We don't really know any more we can do for you", that is goodbye, sincerely yours, but goodbye.

After about 6 or 7 months in the late 1963-1964 period in which I took the usual TV, radio road tour through the country, the issue pretty much was gone. It surfaced and then disappeared occasionally which, incidentally, this issue has had a habit of doing. It surfaces, there is a reaction momentarily, and then it disappears.

That is why I noted at the outset of my remarks your subcommittee, sir, and the work of your colleagues, is extremely important in keeping this issue alive, because it is ultimately the only hope we have of expunging this scandal and recovering democratic ideals which in every respect is counterposed to this phenomenon of utilizing Nazi war criminals.

Now, I would like to talk about what briefly happened subsequently.

In 1973 in December, December 17, 1973, I was getting prepared to go out to the west coast to do some winter mountain climbing and ski touring, which is one of my avocational pursuits, and at 7:30 in the morning, right before catching the flight to Seattle. I was going to do the Shastas and Bowman's Run Park in Canada, and I was pretty excited. The phone rang and I had an 11 o'clock plane to get, so I curtly answered the phone. An individual identified himself, we are not using names so I will just describe him as a criminal investigator for the Immigration and Naturalization Service.

He asked if I was Charles R. Allen, Jr., the author, and so forth, and I said, yes, who are you, what are you calling me for? He said, we are now interested in reviewing, we have revived our interest in

reviewing the allegations of Nazi war criminals in this country. Then I said, 1973, 10 years later you are suddenly telling me you are interested? Hey, look, I have to catch a plane; I am going somewhere where you will never reach me by phone. If you want to talk with me I will talk with you in my lawyer's office.

I completely forgot about it. Well, in the meantime, after three weeks of just delicious isolation, at 10,000, 12,000, 13,000 feet on the west coast, I came back and I was deluged with phone calls and notes from friends, associates and colleagues telling me that the Nazi war criminal issue had really busted open.

There was the work of Ms. Holtzman, the various defections, so to speak, regarding former officials of the INS, the, I think December 29, 1973 Sunday edition of the New York Times; I think that is the date, don't hold me to it, but I believe it is, had that piece by a colleague of mine, Ralph Blumenthal of the New York Times, reporting this revival.

And obviously this was a new ball game at another level and the breakthroughs, as I could judge just immediately, were considerable.

These gentlemen from the INS got in touch with me, they said they were still interested in pursuing the question. I said fine. Let's repair to my lawyer's office, my attorney's office at our mutual convenience, which we did. And we had a 3- or 4-hour session.

Now here is what they asked me. They asked if they could see the materials and files which I had developed. I said, "yes; you are welcome to them." They asked if I would revive, because I was then working on another book, if I would revive my contacts with the War Crimes Documents Center in Western Europe, Eastern Europe, Soviet Union, Israel, and certain places in Latin America, and I said, "yes; I will."

Would you advise us in any capacity on this? I said, "no, I will not." That is your problem. I then said I will do this on a quid pro quo basis, that if I come up with any new materials or develop any major new stories or have extensions beyond my original efforts, because by 1964, 1965, 1968, my own findings were, as a result of research and investigation, that there were some 59 or 61 accused Nazi war criminals in the country by that date.

I said if I come up with more materials, because now I could feel myself getting caught and pulled back into this question; and, believe me, I was reluctant because my publishers were screaming about the other book and what was I going to do about it. I had these problems, in terms of getting other work done. So it wasn't with any great enthusiasm. I would expect them to actively use my materials. They assured me that they would. This was in 1974, January, thereabouts.

As a consequence, I am now doing a second book, much, much larger—as a result of the work of your subcommittee, I might add—than the first one back in 1963 and I might add parenthetically this: that while tangentially and informationally I will have something to say about the GAO report and competence and incompetence of INS, I must tell you my own personal experience and I don't necessarily equate this with anyone else and I don't challenge theirs, but on the basis of my own personal experience, the INS officials who had contacted me and whom I have known

have proven to be men of integrity. They have proven to be as good as their word for what they could do, but obviously their limitations are very severe and obviously they cannot do that much.

On the other hand, I will as indicated further on, I will not be so gentle in my judgments based on the facts in terms of the higher officials of not only that agency but others. The recent developments within the INS over the last year 1977 on the special task force which was brought together here in Washington I think are suggestive of more positive possibilities, potentialities, and development. But briefly, and only briefly and only generally, this has been my experience in terms of my own efforts as an independent writer, author, and journalist, vis-a-vis these various Government agencies.

Now since that time I would like to add a couple of other things, and that is there is one agency in particular, I am not talking intelligence now, I am, talking Government Agency, which has proven to be virtually obstreperous in terms of this issue. That has been the State Department. They have consistently, everlastingly evaded, delayed, engaged in protracted delays with this issue. I think it is very interesting if you go back to my original work in 1963. I would like to point out that there I had indicated the folly of not going after documents and data and eyewitnesses in Eastern Europe and the Soviet Union. I do not care personally and objectively that they are Communist countries. I do not care what kind of data and documents and eyewitnesses I have because I will ultimately test them against standards of the objectivity of what we have here in this country.

I think on the David Susskind TV show that you, Mr. Chairman, referred to on which we appeared together with Miss Holtzman, I think you both had very good answers to that.

Let us examine—this is the principle I proceeded along in 1962, 1963—let's examine the documents, let's examine the data, let's assess the eyewitness testimony which we are able to gather on these various questions and then in turn judge them and test them against, one, our juridical system and, two, our own investigatory standards, and let them stand on that basis. That is exactly what I did.

I am glad to see now that at last, over the last several months, the State Department has—you know it forbade the INS from gathering evidence in this area—is now apparently working in conjunction with the Immigration and Naturalization Service on securing data and documents and eyewitness testimony from these areas.

I might add, however, as I will indicate later on, in my view the officials at State are not asking the right questions and they are not vigorously enough pursuing these questions from a basic conceptual point of view. In other words, their questions are perfunctory. Consider the Berlin Document Center in West Berlin is essentially a State Department operation.

I might also point out that not only for myself but other journalists, writers, and authors, the Berlin Document Center has been a source of contention with us for a long while and with the State Department, they are not in any way cooperative. But they are

extremely, extremely sensitive to the rights of alleged, even proven Nazi war criminals on whom they have plenty of records.

I offer as witness not only my own assertions on this—and they are assertions although I have proven it in my writings and articles, the February 24, 1978 issue of the Miami Herald which carried a byline piece by Steven Miller of the Associated Press, which makes this same point about the Berlin Document Center. I also had exchanges with the BDC and this has been further demonstrated.

I also would like to point out that in conjunction with this, various prosecutors and investigatory bodies in the Federal Republic of Germany, West Germany, have also followed this pattern of delay, protracted delay, evasion, failure to cooperate, particularly with independent researchers, investigators, and writers like myself, and also with the media. That, too, can be verified.

I would like to underscore the impediments and the obstructions, particularly of the State Department because it is my analysis that the State Department is the kernel of this problem. I know the intelligence agencies have a certain glamor, mystery, aura about them which attracts a lot of people's attention. But the basic conceptual hard facts of the matter, largely, in my view, lie in the State Department, right from the beginning of this issue. I am talking about utilization, I am talking about also delays, protracted delays, evasions, and evasiveness.

One final thing. At the invitation of one of the major wire services in this country, I was asked to look into the recent reformulations and reorganizations of the Immigration and Naturalization Service to see if it was working better on this matter. I must tell you that in company with another journalist, Mr. Mark Kamen of Texas we examined this for an entire day at the INS last fall. I was struck by two things——

Mr. EILBERG. Mr. Allen, are you referring now to——

Mr. ALLEN. Mr. Castillo's present administration, Mr. Mendelsohn.

Mr. EILBERG. You are speaking about the litigation unit?

Mr. ALLEN. Yes; the special unit, since its formulation I think in the summer of 1977, and then I think they really got rolling sometime about the fall.

Now, we went there and spent an entire day with those gentlemen, and I have two impressions. Let me first give you the bad news.

I have never seen such a mare's nest of inefficiency, incompetence, and absolute dead level inertia. I am now just talking about this area of administration. This is what Mr. Castillo and his administration have inherited. But I am talking about what I perceived to be the entire operations of the INS there.

Now the GAO report noticed in the form of a complaint that there was no system; system is hardly the word. As of October of 1977, nothing was on a computer in that entire agency, nothing. There was no computerization of any data. I am not just talking about the Nazi war criminal issue, I am talking about any data. To me that was just mind-boggling. When actually, as you know, a systems analyst could go in there, or a team could go in there and in weeks straighten that out and make the Nazi war criminal issue

subject to retrievals and analyses in micro seconds. This has not been done at all.

I was also—I went into one room which Mr. Castillo showed us in order to demonstrate what he had inherited. The sloth, the mismanagement, in terms of management of—from an efficiency point, not a moral point, a total corruption of office management. There were stacks and stacks and stacks in this one large room, as large as this room we are in now, stacks and stacks and stacks of unopened file cabinets and boxes and cardboard cartons, with visa entry applications falling all over the floor and with other just deplorable conditions.

He was trying desperately, this was 11 o'clock at night and here the Commissioner himself was up working these hours. I deferred doing a story at that point because I thought on the second aspect of my impressions there. I thought Mr. Castillo and his administration, his staff, namely Mr. Mendelsohn, and Mr. Crossland and their associates, struck me as being very decent, sensitively motivated people.

I have done stories in the past on the INS and I have never been particularly impressed with that agency's qualitative level of operation or conceptual abilities but I do believe that this is a new group and so I deferred doing the story on the basis that they should be given time to see what they can do in a positive way.

I have already indicated that my communications with the Justice Department, State Department, INS, are available—if you would prefer, if you agree I will very gladly enter this into the record of your subcommittee.

Mr. EILBERG. We would like the opportunity to look at those statements. I do not want to assure you that we will put everything in the record.

Mr. ALLEN. I understand. But you can look at them. You are free to enter them into your record for purposes of historical background, which I understand is one of your purposes in gathering together the materials following subsequent to these hearings, is that correct?

Mr. EILBERG. That is correct.

Mr. ALLEN. Fine. Now, I also would like to make one final remark and this is by way of reportage, it is in my new book, that there was a high INS official, served in the INS, I will not name him here, who, according to my information—which is from a very, very fine source that is dependable, experienced, knows what he is talking about—there was a memo written in March 1964 coming from the official who managed the budget and the managerial processes, the administration of the INS for many, many years, telling them to close out all case 2 files; that is, the Nazi war criminals cases.

Now prior to this present administration I tried to ascertain whether or not that was true. I was not able to do so. That is one of the questions I put to the present administration of the INS, and it is a question which I also put to this subcommittee, particularly in view of the fact that the GAO now has apparently agreed to assign, detach persons in the full-time service of the subcommittee.

Mr. EILBERG. Departing from that point, once again, Mr. Allen, we appear to be in something of a dilemma. Statements are made,

we know your reputation of integrity, but I think we need something more than just a statement that some high official put a stop to all Nazi investigations, and if you wish to talk privately with us, if you have other information, we would certainly like to have that. But that statement alone I am afraid does not help us very much.

Mr. ALLEN. Oh, I understand. And I can tell you that as indicated by this brief statement I was making to the historical introduction up to the present, this can be demonstrated in other areas too. So that if you will be patient, you can read it in my book.

Now that concludes briefly—and I apologize for its brevity—that concludes the historical introduction by way of my own experience, and I hope it is of use and usefulness to the subcommittee. Do you want me to go to the second section.

Mr. EILBERG. Yes, please.

Mr. ALLEN. Fine.

Mr. EILBERG. We will be running into time problems and if it is possible, if you could shorten your presentation a little bit, we would appreciate it. We can accept of course further statements for the record, as you might wish to write to us.

Mr. ALLEN. Yes; you may reject or accept anything you wish, of course.

The second part I also—I apologize in advance, but it is going to take time to develop certain of the things I am going to say, certain things I am going to adduce and certain of the conclusions I will necessarily reach from the basis of my own analysis.

It just so happens, and I do mean just so happens, it is entirely coincidental, that starting last February I prepared massive Freedom of Information Act requests of 13 agencies of the U.S. Government. They include the following: Department of State; the DIA, Defense Intelligence Agency; the ONI of the Navy, Office of Naval Intelligence; Air Force, A-2; Department of the Army; Office of the Secretary of the U.S. Treasury; the National Security Council; the National Security Agency; the National Aeronautics and Space Administration; and the current International Communications Agency; Radio Free Europe, Radio Liberty; the CIA; and the FBI.

Here is the four-page letter which I am sending to each of these individuals agencies indicating the specific nature and the general nature of my FOIA requests. This is a sample copy. [Referring to letter which was submitted to the subcommittee.]

I will be mailing these at the end of this week. I have included the following four elements in these remarks and I would like to briefly describe to you what they are and then give to you samplings from each of those areas that might be helpful and useful to the work of this subcommittee.

I must add at the outset, however, that these are all copyrighted materials. As a matter of fact, they will be parts of my book, so that they are copyrighted. But, on the other hand, in discussion with my own attorneys and in discussions with the Copyright Patent Office, I will perhaps be in a position that these things may properly be examined by others, including your subcommittee.

The first I call annex 1, these are going to be annexes in my book. As you know, since 1973 there have been several so-called lists of accused or reported Nazi war criminals residing in the United States. That is the official title which the INS has used

since 1973 up until recently. There is now another system which Mr. Mendelsohn has introduced, it still amounts to a list. I know of and have secured at least seven of those lists and they will be put in as annexes to my own work. I find most of the lists, by the way, pretty sloppily drawn up and pretty ineffectual. You have to do an awful lot of work to understand them.

Annex 1 of my FOIA request to these agencies includes what I call individuals; naturalized or resident aliens. It amounts from A to literally Z, to 149 individual names, including cases and records of these individuals. It includes wherever possible their date and place of birth, their date and port of entry into the United States, their date of naturalization, a brief description in what you lawyers call a fair description of what is charged against the individual, a brief reference to the documents involved—because my book itself and my work itself go into each of these documents; also their present whereabouts in the United States, wherever possible. Fully 80 percent of this list is sound and accurate in those terms.

Of these 149 individuals, there is evidential material ranging from actual documents which will stand up substantively—namely, letters from the CIA, letters from the Justice Department, letters from the State Department—showing a relationship, an involvement by these individuals with these agencies. These 149 individuals have, when you take them collectively, been charged with the responsibility of genocidal participation amounting to some 2.4 million people during the period 1941 to 1945.

Mr. EILBERG. Did I understand you to say that all 149 had some involvement with the Federal agencies?

Mr. ALLEN. In one way or another, there is evidential material—by evidential materials I mean documents and also assertions on the part of some of the individually accused war criminals themselves.

Mr. EILBERG. The materials show the identification, working relationships with various agencies?

Mr. ALLEN. Or asserted relationships.

Ms. HOLTZMAN. May I ask a question?

Mr. EILBERG. Ms. Holtzman.

Ms. HOLTZMAN. Is the witness referring to Freedom of Information Act material requests that have not yet been sent or is he referring to the materials he has received back in response to these requests?

Mr. ALLEN. Oh, no; I have not yet sent my FOIA request. I am saying this is the basis for the FOIA request.

Ms. HOLTZMAN. Thank you.

Mr. ALLEN. Now I am not of course going to sit here and go through 149 names, but I have selected a dozen cases which I will identify by Nos. 1 through 12. As I said before, this is where I have problems with your rules because I myself would not do this.

I wonder if I might get a glass of water. Would that be all right?

But I would like to also point out that the second part—

Mr. EILBERG. Wait just a moment.

You referred to items 1 through 12. What did they represent for the purpose of the record? You said you had certain cases Nos. 1 through 12.

Mr. ALLEN. Oh, yes. I will just refer to them as cases 1 through 12 because I think that in each and every case there is very substantial evidence of third agency involvement and I want to bring that out at these hearings because I think this is what will be most useful to you and most useful to the American people in judging this issue.

The second part of the FOIA request and also my presentation here this morning deals with individuals who have been utilized by the U.S. Government agencies, particularly from abroad—particularly in the Federal Republic of Germany—whose war criminality is a matter of record and these include one of the cases I have already discussed here, and particularly their usage by Government agencies.

The third part, which I call—deals with organizations, units, and operations.

Now let me explain that. You cannot appraise this issue, Nazi war criminals in the United States, without taking it like a jeweler would, a raw gem and cracking it into its constituent and component parts. You must examine what this issue consists of. It not only consists of individuals so accused; it not only consists of transient noncitizens, so utilized; but also, there is evidence of various organizational aspects to this question.

There have been transplanted here, in our own body politic, so to speak, Fascist organizations from the late twenties, thirties, and the war period which have been transplanted here in the United States by many of these Nazi war criminals and by other individuals. Also, there are certain governmental operations and organizations which have made such utilization. I am going to touch on that too.

The other annex which I will discuss is an astounding thing; namely, the listing which was given by a 1946 U.S. Senate Committee on 680 U.S. citizens who had, during the period as early as 1924 through 1941, been dues-paying and secret members of the NSDAP, that is National Sozialistische Deutsche Arbeiter Partei, the Nazi Party of the Third Reich, who were American citizens in what they called the AO or Auslands organization.

I will deal with them, because these lists as recently as 2 or 3 weeks ago consist of viable contacts between Nazi war criminals and these former members of the Third Reich's Nazi Party.

Then the fourth section which I would present to the committee are specific documented instances of U.S. Government harassment of myself in my efforts to investigate and research and write on this subject, which I think is relevant to the question of Government interest and Government activity in this area.

I will now return to the first, or the list of individuals. If I go off the beaten path in terms of your proscriptions, please stop me and I will try and do my best in that regard.

Mr. EILBERG. This is of course a House rule, and we have to make every effort to abide by it.

Mr. ALLEN. Yes; I understand, I understand.

This case deals with that of a Croatian extreme nationalist, an early member of the terrorist organization called the Ustashi, which was a fascist assassination bureau founded in the twenties. He was Minister of Interior during the Nazi occupation of Yugosla-

via in 1941 to 1944. He was accused of a prominent role in the decimation of 600,000 Yugoslavs, mostly Serbians and Jews. He is specifically charged with 1,239 murders which he personally committed or directed.

I have the dates and so forth regarding his entry and date of birth, that type of thing I am sure you do not particularly want. There is presently an open deportation warrant out on him. He resides in California; as early as 1951, the extradition was requested of this individual and the basis for such request was upheld by the U. S. Supreme Court, but later, because of "political persecution" being the basis for the judgments, his deportation was denied.

The evidence which I have developed shows unarguably that he has enjoyed right from the beginning the support of political, judicial, and congressional figures now identified as members of the extremely right wing John Birch Society.

Further evidence indicates systematic use of this individual from the fifties through the sixties by Government intelligence agencies. What was that use? The use was for purposes of serving as an informant, so-called; I prefer the term "informer," among emigre groups and communities in the United States. I have written about this, as you know, quite extensively, Mr. Chairman, and that use is palpable and provable.

I might add this, that in this case the Immigration and Naturalization Service asked if I would inquire of the country showing an interest in this case whether or not, this was—this was back in 1974—whether or not they were still interested, and of course the answer was yes. As a matter of fact, I went to the Ambassador to the United States, from this country, and had a long talk with him and he assured me that the U.S. media would be invited to any processes which would follow the alleged Nazi war criminal's successful extradition to stand trial.

Mr. EILBERG. Let me interrupt here.

Mr. Allen, are your assertions and compilations of facts based upon your own independent investigation or are they hearsay based upon the investigations of others? That is one question.

The second question is, we have within the last year visited Yugoslavia and have received assurances from that Government that the individual evidently referred to here would indeed receive a fair trial. So I just wanted to make that information available to you.

Mr. ALLEN. Thank you.

Yes; I can tell you that the documents I have gathered, for example, relationships with the extreme right wing in our own body politic, are based on independent evidence.

Mr. EILBERG. My concern is more with what evidence you have, independently developed by you, of his having committed wartime atrocities, and being a war criminal in the sense we are describing and subject to denaturalization and deportation.

Is this original research on your part or are you relying on the findings of other investigators?

Mr. ALLEN. I am relying primarily on the documents that I have studied, and also primarily on the first—for example, the first Immigration and Naturalization Service hearing which ruled on

the evidence, and their ruling on the evidence as you know, Mr. Chairman, were positive; they supported the bid for deportation.

I am also relying on further evidence, new evidence by the way, developed over the last 3 or 4 years, of additional eyewitness testimony that is novel since the start of this case.

Is that responsive, sir?

Mr. EILBERG. Yes.

Mr. ALLEN. No. 2—I really find it very difficult to refer to them as cases 2 and 3 and so forth, but I am obeying the injunctions of your rules.

Let me describe this case. Again, please stop me if I utter any first names or anything like that. In fact, this sort of reminds me, if I can throw a little light on this right now, the great radio programs of Henry Morgan in which he was called up before a congressional committee, he was forbidden to use any first names, any proper names. He said during the course, "I am going down tonight to work out at the gym." The chairman said, "Please, no first names." So the witness said, "I am going down to the J." So I am going down to No. 2.

Now a resident of New York State, has lived in New Jersey and New York between 1956 and 1960's. Charges against him, chief of police of the administrative section of the Latvian police, collaborated with and decorated by Nazi invaders of his own country. In 1949, as police chief in the Arbene district in Latvia, he is charged with committing atrocities against 300 Jewish men, women, and children.

Mr. EILBERG. Mr. Allen, I have to interrupt again. I had not perhaps done all the legal research necessary perhaps to sustain a burden of proof in a denaturalization or deportation proceeding, but I have to assume that the evidence required would be that of eyewitnesses to atrocities committed.

I am fearful that what you are telling us about, as in case No. 1, are summaries or materials that you have read about rather than that you have obtained directly from people who could identify the individuals involved or who witnessed atrocities. I wonder if we could have your comment on that.

Mr. ALLEN. Well, you want me to just generalize?

Mr. EILBERG. Well, I would like to have all the materials that you have but I just want to know to what extent you went out into the field and spoke to the eyewitnesses.

Mr. ALLEN. I see; fine.

Well, survivors and eyewitnesses involved with this specific case have come here to this country and testified. I have been at some of those hearings, and also I have talked with some of these eyewitnesses myself as well as exchanged materials with colleagues in journalism who have been there and have been prominent, bylined reporters and journalists on their story. So this is the source of my material.

I think it is as good, perhaps even better than what the U.S. Government has today, particularly in some of these 12 cases that I choose to talk about this morning.

Shall I continue?

Mr. EILBERG. Yes. I am concerned now about the time element; and I am wondering if you could generalize about the remaining 10

or 11 that you have and then whether you could when our hearings adjourn, stay this afternoon and speak further to our staff about those 12 cases at least.

Would you do that?

Mr. ALLEN. Well, I can—you see, in this particular case, while the accusations against this individual are very, very serious, the material that I would like to present to the subcommittee on this particular case is third agency involvement, which is pretty powerful.

Mr. EILBERG. Go ahead with that. I am just suggesting that we cannot conduct the hearing for an indefinite period.

Ms. Holtzman.

Ms. HOLTZMAN. Just as a suggestion perhaps. As the subcommittee is concerned about other agency involvement, if the witness would not go into the allegations against the people but just refer to the agency involvement or at least some of the agency involvement, that would be helpful.

Mr. EILBERG. Yes.

Mr. ALLEN. In other words, you want me to just briefly indicate the accusations or—mostly you are concerned with third agency involvement?

Mr. EILBERG. At this time; yes.

Mr. ALLEN. All right, fine. Again I defer to your rules of the House—

Mr. EILBERG. This is not a rule. This is a matter of trying to expedite.

Mr. ALLEN. I understand. In this case, his admission to the country was in 1956. The GAO report I do believe in this particular case, because although it is unidentified by name, refers to it, it is clear to me it is this case. There was an indication that there was no knowledge of this individual background and the charges against him prior to his administration in 1956. This is false. As early as 1954, there was such knowledge.

I am quoting from the admissions of the individual himself. "The Government had a full and fair opportunity to investigate these charges before giving me a visa."

Then from an FBI report, an excerpt from it, "Files of the Office of Security, U.S. State Department, noted that [name] was accused in 1954 of murder and persecution."

Thus this knowledge was on the record before he was admitted. And thus the attempts to minimize or to deny any such knowledge are false.

I would like to go on to another case.

Mr. EILBERG. That is all right for the time being.

Mr. ALLEN. This case involves again an individual accused of mass murder in occupied Soviet Union by the Nazis as a collaborator. This is taken from an interview conducted in 1968. I will indicate the questions and answers.

Question—and incidentally, this interview was tape recorded, typed, and also transcribed, and it is also part of my new book.

Question. I am under the understanding that one of the reasons you have nothing to fear or hide today in the United States is that you are under the protection of the FBI. Is this true?

Answer. Yes.

Question. Why?

Answer. Well, they were notified about me after the war and also a few newspapers in Canada and Chicago in 1963 or 1964. I have these articles and I will show them to you when we have more time. The articles were against us, 15 or 18 of us who now live in America.

Mr. ALLEN. This is part of the original 16 and 17 that you were referring to, Ms. Holtzman.

Question. Have you anything to fear?

Answer. I have nothing. I no think I go to trial.

Question. For what reason? Did you ever work for our government?

Answer. No.

Question. We have information that you did work for our government following the war, you worked for the State Department?

Answer. Who said so?

Question. I said so.

Answer. Well, no. Well, I did file an application in 1951 to fly as a parachutist over my country and some of my friends did went there."

Question. I don't understand; repeat.

Answer. In 1951 I made such application.

Question. Would you go, yourself, on such a mission?

Answer. Well, if they ask me.

Question. Did they ever ask you?

Answer. No.

Question. I have information to the contrary.

Answer. I only was contacted by the FBI two times.

Mr. ALLEN. He named the name of the agency; do you want that?

Mr. EILBERG. No.

Mr. ALLEN [reading].

In Chicago, FBI agent.

Question. And from Newark?

Answer. Yes. I forget his second name—his first name.

Question. How old are you now?

Answer. I am exactly 46.

Question. You look in good health to me.

Answer. I feel good; I have no fears.

Mr. EILBERG. This case that you have just summarized, obviously we should have the information that you are talking about in detail. I wonder if you would be able to stay beyond our hearing this morning to meet with our subcommittee staff so that we may receive all of the information which you have.

Mr. ALLEN. I think we can discuss this. I would like to just merely put the proviso on it that I must further discuss this with my attorneys and publishers.

Mr. EILBERG. All right, sir.

Mr. ALLEN. I will go on to the next position, which is case No. 4. This is from the Philadelphia area.

The charges against him are of the usual participation in genocidal acts during the occupation of the Soviet Union, in this case Lithuania, in the period between 1941 and 1943. Documented. He was the subject of an extradition request. Of course there is no extradition agreement between the United States and the Soviet Union.

I found several things back in my original investigations that I think are of relevance. I found that within a 10-square block area, within a 10-square block area, this individual, as well as 6 individuals, the documents about which proved they belong to the same Lithuanian punitive detachment, were living as neighbors of this individual.

In other words, the seven of them were living in the same area in the city of Philadelphia at this period 1962-63. Most important of all, most of the time when I would interview these individuals themselves, a good many of them would invoke the FBI, as a matter of trying to counter me or trying to intimidate me.

Mr. EILBERG. How do you mean invoke?

Mr. ALLEN. When I would ask some questions about their background, they would say, "Look, if you keep this up I am going to report you to the FBI," or "I have sources in the FBI. I am going to report you," to me. I ignored it, discounted it, but I am just saying this was a consistent pattern.

Now this individual, when his extradition was requested, the Philadelphia Daily News of June 20, 1962, that year said as follows:

We are sure Russia will not get very far in its attempt to extradite [the Philadelphia resident] and try him as a "war criminal." He is right in calling this move Red propaganda. Why not extradite instead Khrushchev on charges of mass murder.

I say this because this was the tenor of the times, this is the flavor of the atmosphere at that time, this is part of the historical process which are not easy, they are subtle and complex, which I was talking about at the outset of my remarks.

Then the Philadelphia Evening Bulletin the same date described him as follows:

He is a man who keeps up on the activities of other Lithuanians in this city and the United States.

On the basis of that I went and interviewed this individual and he, too, made dispositions that were similar to the ones that I just indicated in my previous remarks.

I might add parenthetically that the Philadelphia Daily News, to show you the changes of times from the cold war-McCarthy period, its reporter Frank Dougherty and the work that the Philadelphia Daily News, original creative journalism, is doing in this area is absolutely first-rate. So that I do not in any way impugn the Philadelphia Daily News. I am just using it as a historical source.

Mr. EILBERG. Let me say I know Frank Dougherty and I have read most of what he has written for the Daily News, and I can only say I agree with you.

Mr. ALLEN. Yes; he is a top reporter.

Now I would like to go to No. 5. This deals again with an accused Nazi war criminal, in this case accused of participation in upwards of—the decimation of upwards of estimated 60,000 people, mostly Jews, specifically charged with 12,000 that he directed, 12,000 murders.

Now I have with me—and he is also the subject of proceedings by a Government agency at the present time. The San Diego Evening Tribune and newsman Bob Dorn—

Mr. EILBERG. Can I interrupt here?

Ms. Holtzman pointed out her concern and our concern of agency involvement, governmental agencies.

Mr. ALLEN. Yes; this is third agency. I am not going into the details of the case as such.

Mr. EILBERG. Very well.

Mr. ALLEN. I have copies of three pieces of correspondence dated in chronological order as follows: April 11, 1975, May 5, 1975, July 20, 1976, from the CIA, addressed to this individual. Would you care that I read these letters? They have been published. It is a matter—

Mr. EILBERG. We would like to look at them privately if we may.

Mr. ALLEN. Pardon.

Mr. EILBERG. We would like to look at them privately if we may.

Mr. ALLEN. Let me just summarize then what is in this correspondence.

Mr. EILBERG. All right.

Mr. ALLEN. This is obviously and patently and inarguably an attempt by the CIA to intervene on behalf of this accused Nazi war criminal. It is on the record.

On case No. 6, an Estonian, accused Estonian Nazi war criminal, who also, as I described to you, invoked the powers of the FBI against me. But I raised his name in my own listings because of these allegations, my arbitrary frame of reference is from documents to assertions by the accused Nazi war criminal, himself or herself.

The fascinating aspect of this case deals with a case which has already been tried in court, which I would like to summarize if I may, because it is related, in that the accused individual, I have the documents, is also related with another individual also from Estonia who is the subject of this trial. If I may summarize it, I would like to because it brings out third agency involvement.

Mr. EILBERG. Very well.

Mr. ALLEN. And I am quoting here from the book, "The CIA and the Cult of Intelligence," published in 1974, and the part that was not excised, a part that was not excised.

Mr. EILBERG. Is this classified, Mr. Allen, to your knowledge, the material that you are about to read; Is this classified information?

Mr. ALLEN. No. It was published by Alfred Knopf in 1974, so I assume it is not classified.

Mr. EILBERG. All right.

Mr. ALLEN. "CIA has also been quite active," and incidentally, this is instructive because—in the sense that all of this is instructive but this is instructive of how this process works because, as I said, the two individuals I have proven and their relationships with third agencies have been demonstrated by me.

The CIA has also been quite active among Eastern emigres in the United States. In November 1964, [name], an Estonian refugee living in Canada sued for slander another Estonian resident in Maryland—he was the American national commander of the Legion of Estonian Liberation—was alleged to have denounced the other individual as an agent of the KGB. The individual's defense in court, in other words, the subject of the suit for slander, was based not on specifics of the case but on an affidavit submitted by the then CIA Deputy Director—

Do you want his name—

Richard Helms, stating that he was a CIA agent and had spoken out against the plaintiff among other Estonian-Americans under direct agency orders.

Now I am going to pause there because this is very important. The previous case in which the three CIA letters, which have been published in the San Diego Evening Tribune, the body of them, so

this is not classified either or, if it is, it is no longer classified as far as the American public is concerned.

The principal role of this previous individual in his own words in the San Diego Evening Tribune's special and copyrighted series of articles by Bob Dorn, excellent series, was to, "provide misinformation among Latvian emigres living in the United States, Western Europe, and elsewhere." So that this reference in the Marchetti and Marks book is instructive on this point, namely, he was under direct orders to speak out against this other individual accused of being a KGB agent among Estonian-Americans.

Furthermore, during the course of the trial Helms of the CIA submitted two more affidavits ordering [name] not to testify in court in order to protect the integrity of the agency's foreign intelligence sources. The Federal judge ruled against the plaintiff, upholding this contention. The ruling is as follows:

It is reasonable that emigre groups from behind the Iron Curtain would be a valuable source of information as to what goes on in their homeland. The court concludes therefore that activities by the CIA to protect its foreign intelligence sources located within the United States are within the powers granted by the Congress to CIA.

That is the ruling of Judge Thompson. Incidentally, that ruling has never been challenged. Thus any foreign intelligence source—which, as far as I am concerned, is legerdemain for invoking national security in the name of anything, and we are as Americans, particularly since the McCarthy period, fully conversant, fully knowledgeable, fully expert in such patent rot, is eligible for CIA investigation, harassment, or whatever. That eligibility extends as a result of this ruling to the privilege of being investigated, suborned, harassed, or whatever else that covert operators might wish to do, including citizens of the United States, including citizens of the United States such as myself, whose family came over here in 1644, to avoid that kind of patent subversion of the civil liberties and the civil rights of the American people.

The next case I am just going to refer to briefly because it involved a faculty member of one of our prestigious universities, Yale University.

As you know, I have written on this subject matter at great length and have been quoted extensively throughout the press. This case involved Yale University. I can tell you that I have also written other articles which have not suffered any libelous complaints. As a matter of fact, I would love to have such a libel case because I would get it into court, in which accused Nazi war criminals and collaborators have found their way into our prestigious institutions of education and learning.

In this case, Yale University, the facts of which are quite public, the one aspect of third agency relationships indicated that in the period 1949, 1950, 1951, this individual was an interpreter and debriefing analyst for the Debriefing Reception Centers of the CIA in West Germany. That material has been published. It has been accepted, there has been no denial of it. As a matter of fact the individual, in trying to defend himself before the faculty committee of inquiry at Yale University, let this slip out. And I have a copy of that university transcript.

Now, No. 9 involves a very involved case. If I may, I would like to refer to a series of nine articles that have been published in the Newhouse chain of newspapers, most specifically its paper The Newark Star Ledger in New Jersey and its top investigative reporter, Herb Jaffe—in my view one of the finest pieces of investigation done by any American journalist in the United States on this issue.

The data which I have extrapolated from these series indicate third agency involvement to quite an alarming degree, starting in the midfifties. I will not go into the details but I will simply summarize which agencies are involved and you are welcome to my extrapolations, although again they are copyrighted and I have already given my admonition about that.

The National Security Agency, the FBI, and the CIA, the relationships are quite clear to me, of a paramilitary nature. Let me tell you why it is quite clear.

When you look at the accusations against some of these individuals such as is the case involved in this individual case, for such is the point involved in this individual case; one asks what possible talents or what possible experience in the so-called question of being an expert on the Soviet Union could come into play here? He is charged with doing many things, and among them are terror operations, roundups, interrogations, brutalities, ultimately murder.

What possible use could the United States have for such activities? What possible use could they be in carrying out government in our country? The possible use is clear. It could be used for paramilitary purposes.

And I point out to you the Phoenix operation during the Vietnam war. There is no doubt in my mind between the period 1950-54 through the sixties such utilization did indeed take place. And this particular individual case which we now have on the record in what I think is the largest read newspaper chain in the United States, if I am not mistaken, is there for anybody to study very carefully, simply extrapolate and the resulting conclusion that any logical inference can bring to bear is that it is for paramilitary experience and paramilitary purposes.

Mr. EILBERG. Mr. Allen, when you were interviewed by the GAO, did you give all this information to them?

Mr. ALLEN. Yes; I did.

Mr. EILBERG. Does their report reflect any information you gave them?

Mr. ALLEN. Yes; it does; some of it does not.

I might add this about the GAO report, that I think statistically, as far as I am concerned personally, the report was of value because it has provided me many new leads and many new insights. But qualitatively, as already indicated by the questions of the subcommittee, it leaves a lot to be desired and I am not going to comment qualitatively on the report itself.

I just want to note, however, that I thought the two individuals concerned with the report, namely John Tipton and Joe Mladonick impressed me as honest people, decent people, trying to do a job but under terrible constraints. I think it is another reason why I emphasize the real historical role that you and your subcommittee, your colleagues and your staff are playing on this issue because the

ultimate power, perhaps to ultimately define this question, really resides with you.

I would just like to make that comment.

Mr. EILBERG. Ms. Holtzman.

Ms. HOLTZMAN. Just to clarify the witness's testimony, did you say there was evidence that the Federal Government used case No. 9 in terror operations? I am just trying to understand you.

Mr. ALLEN. No; I said in asking myself the questions, why would this individual serve for a period of 6 months in Fort Meade, Md., of what possible use, which the documents show was a military operation, would he have for such operations? The only conclusion would be the one that I drew, namely, paramilitary, counterinsurgency. And I think I am quite justified in making such inferences.

Now I would like to call your attention—is that responsive, Ms. Holtzman—to what I consider the most important of all the individual cases.

Mr. EILBERG. Which number are you on now?

Mr. ALLEN. This is No. 10. Again, my discomfiture at such processes, but most respectfully uttered.

This deals with I think the most important of all the cases. This individual occupied perhaps the highest post in the U.S. Government, with the one exception perhaps, of any accused Nazi war criminal or collaborator.

The area in which he worked as an employee and naturalized citizen and employee, I assume I can mention that area in the agency.

Mr. EILBERG. I didn't hear that statement.

Mr. ALLEN. I assume I can specify the two agencies he worked with, the U.S. Air Force and the National Aeronautical and Space Administration. He was one of their highest officials and he was accused of complicity in experiments conducted on individuals at the Dachau Concentration Camp, 1942.

This individual, on the record, New York Times, Washington Post, I am talking about, 1973, denied any knowledge during his period as a high ranking Luftwaffe official and scientist, so-called scientist, in the Nazi German period, denied even knowledge of those experiments.

He, as a matter of fact, appeared as this subcommittee well knows, on the June 5, 1974 lists of the Immigration and Naturalization Service which released 37 names at that time. He disappeared within 24 to 48 hours because of intervention by high congressional figures. That really whets my appetite when high officials in the Government say no, I want to find out what the answer is.

I subsequently did my own research in the Columbia University International Law Library and in consultation with a former prosecuting attorney for the United States at Nuremburg and in consultation with the Director of that Law Library, an acknowledged expert in this area, and in consultation with the Director of the National Archives of the United States—in terms of gathering the evidence and the data, assessing it and then going ahead and writing a fair commentary on the data.

I found out that he did, in fact, know completely about these experiments. That the Nazi SS, who were carrying out these ex-

periments at Dachau, in which several hundred innocent Jewish men and women, gypsies and Russian POW's were put through the most excruciating experiments concerning high altitude experiments and ingestion of sea water, and so forth were reporting to him daily; and he not only knew full well but was reading almost virtually daily analyses of these experiments on these human beings.

I also proved on the basis of American prosecution materials, itself, in 1946, that he was considered a prime suspect as a Nazi war criminal. I also proved by the documents that he himself gave a speech before a secret conclave of those scientists, SS officials, Luftwaffe (Air Force officials), Wehrmacht (Army officials), Kriegsmarine (Navy officials), who carried out these infamous experiments on human beings.

So, if I did nothing else as a result of this analysis of the data, I showed that he lied and, two, the Government knew about it, because even though he was listed as a suspect, prime candidate to stand trial as a war criminal in 1946, he subsequently was flown secretly to the United States in a closed U.S., at that time Army Air Force now the U.S. Air Force plane, and admitted on what they call parole entry in August of 1947 into this country, where he subsequently has been heaped with honors and accolades, degrees by the most prestigious universities, published by prestigious houses, and enjoys an affluence and influence very few citizens of America ever would.

The third agency involvements include not only knowledgeability by the INS, knowledgeability by the State Department, knowledgeability and utilization by the U.S. Air Force but, according to a report filed by Agence Press, which is the French press agency, consultation with the CIA through the early 1960's. There is a series of documents which will be shortly published by a Texas journalist confirming all of these aspects, including consultation with the CIA during that period.

So, that constitutes case 10.

I am going to skip—

Mr. EILBERG. Now, are you available for the purpose of sitting down with our staff to review the material which you have?

Mr. ALLEN. I certainly am.

Mr. EILBERG. We would like to develop not only the cases you are talking about but possibly others, because we would like to pursue these matters with the agencies involved but, obviously, cannot do it without the information that you seem to have.

Mr. ALLEN. I understand. I also understand that in my role as a writer, author, journalist, lecturer, I have latitudes that you do not. So I understand exactly your question, sir.

I hope you also appreciate and understand, with my latitude, I really have a rather different attitude in terms of what we used to call and still do in football, stinging these people in these agencies.

Mr. EILBERG. We don't mind going after the agencies, but we want to do it within the rules of the House.

Mr. ALLEN. I understand.

I am going to skip case 11 because it is a matter of hearsay among his own supporters, and I am going to skip that documenta-

tion, which is on this scale rather limited, but I am going to No. 12 because it's extremely important.

I would describe it briefly and then comment on the documentation which I have dug up and which I have examined, which I have had independently translated in some of my followups on it, which will indicate the level of evidential validity.

Documentation established his employment in 1941-43 in Administrative Offices in the U.S.S.R. under the direct control of the SS with the immediate reporting line to the SD, Sicherheitsdienst, which was counterespionage during German occupation of that region in the Ukraine.

Official translation, eye witness, sworn testimony, places this individual in a Ukrainian unit of Nazi collaborators used for punitive Nazi terror operations. Now, let me emphasize here I have examined the original documents which are German, which prove beyond a peradventure of a doubt his employment as described. I have the documents with his signature indicating the amount of money he was paid by the occupational forces of that part of the Ukraine by the Nazis.

Three, I have the documents showing the units to which he belonged.

Now, let me go further: There is no evidence as developed as yet indicating any participation in punitive operations as such, but the overwhelming evidence, based on his proven membership in the units in which he, indeed, belonged, to which he did, indeed, belong, necessarily suggests that such activities probably followed.

My basis for this is discussion with Raul Hilberg, who is a colleague and whom I know quite well, the author of the monumental research, "The Destruction of the European Jews," and also discussions with Yuri Suhl, author of an equally monumental work, "They Fought Back," a recognized scholar in this field.

It also includes discussions with the individuals, extremely helpful individuals, I might add, at the National Archives of the United States.

These are the 12 cases that I took from my analysis of 149 cases, for whatever they are worth, and I will be quite pleased to discuss them with you again with the mutual limitations and admonitions we placed on each other.

I would now like to go to my next annex, if our time is all right.

Mr. EILBERG. We hoped to adjourn about 1 o'clock, and we are just close to 1 now.

Mr. ALLEN. This would be pretty involved. Do you want to wait until after the lunch break?

Mr. EILBERG. Is that in a form which could be submitted for the record?

Mr. ALLEN. I could, but if we do that, may I just summarize what it is?

Mr. EILBERG. Would you do that?

Mr. ALLEN. The summary is that these individuals are not U.S. citizens, they are not living here, but they have been what I call transiently utilized. I believe that all agree their names can be used.

The list is only of six individuals, actually such a list could literally run into the hundreds, and let me describe why.

The following are not living in the United States or citizens who are naturalized or permanent resident aliens. Some, indeed, already passed away. However, each one of them has been accused of Nazi war criminality, some having stood trial and been convicted of war crimes and crimes against humanity.

Without exception, the following have been wanted by all or one of the members of the Grand Alliance of the World War II, as you know, there were several crime commissions.

There was the U.N. War Crimes Commission and then there was the Commission of the Soviets. Even to this day warrants for their arrest as war criminals still obtain in certain countries in certain instances. Moreover, certain of these individuals also share another trait. They were listed as names on the earlier 1973-75 list of Immigration and Naturalization Service of those "Reported Nazi War Criminals Residing in the United States."

That is the title of the list.

Some have been the subject of inquiries by Members of Congress, by the former INS Commissioner, Glen Chapman who, in turn, admitted in correspondence they also had been listed by the INS. However, these listings are on samplings and representative samples, but they are quite limited, almost ridiculously so.

I have only noted the more prominent ones. I have not included, with two exceptions, anything above field grade officers from the Wehrmacht, nor have I included many of the prominent influences in the Nazi circles, the Nazi Party, the SS, and the government, foreign offices, the educational system or industry, and banking leaders of the Third Reich who have been so used since the end of World War II.

Mr. EILBERG. Mr. Allen, do I understand that these persons were used by U.S. agencies?

Mr. ALLEN. Yes; they were.

Mr. EILBERG. And you identified individuals and the agencies?

Mr. ALLEN. Yes, I shall.

Mr. EILBERG. I am not asking you to do that now. Does that appear in the statement you have before you that you have prepared?

Mr. ALLEN. Yes.

Mr. EILBERG. All right; well, I think you have, unless you would want to make some further points on that, I think we have the essence of it, and you may submit it to the committee.

Is that agreeable to you?

Mr. ALLEN. You want me to skip this section entirely then?

Mr. EILBERG. Yes. I think we can just skip that now. I think we have the essence of what you are saying.

Mr. ALLEN. All right; fine.

Mr. EILBERG. All right. I believe Ms. Holtzman has some questions. I certainly have a few questions I would like to ask you, and perhaps we can then wind the hearing up and, hopefully, you can spend this afternoon with our staff going over these things in more detail.

You have aroused our curiosity in many respects.

Mr. ALLEN. Yes; I will be glad to discuss it with your staff.

Mr. EILBERG. Mr. Allen, you have alluded to this briefly in passing, but I would like to have your statement as to how you account

for the apparent lack of interest in the INS prior to 1973 in investigating and prosecuting cases on which allegations were received?

Mr. Allen I believe, first of all it's an excellent question, and it's not susceptible, in my view, of any single, simple, easy answer.

I do not, for example, buy the notion or accept the notion rather, strike that buy, I do not accept the notion of a great conspiracy. I do not believe in great conspiracies. There are, of course, in history, conspiracies. Recently we have had the Watergate and Koreagate, and various payoffs between multinational companies and countries. They come within the precise legal definition of a conspiracy.

My own conception of a conspiracy largely derives from a footnote in C. Wright Mills book, "The Power Elite," in which he talked about first of all conspiracy being literally and philosophically a breathing together of historical processes.

The point I am getting to is that the utilization of Nazi war criminals was a logical consequence of the acceptance by our Government and also by our people of the premises which are rooted and were rooted and still are being used to some degree, quite a degree, to the Cold War. If you go back and read the Hoover Commission's report of 1954, while I do not have the statement in front of me, I do remember some of the language rather clearly.

It said that we, this is 1954, we will have to instruct the people of America to accept notions that they previously never did accept, that our previous notions of fair play have to be forgotten, that we have to outwit and challenge the enemy in any way we can.

This meant accepting anything and everything, including the utilization of accused Nazi war criminals, and their collaborators, including the transplantation of former Fascist organizations like the Iron Wolf, the Iron Guard, Perkonkrust, the Fiery Cross—Daugavus Vanagi, Hawks of the Vanagi, who supplied the killers and who supplied the informers and terrorists that aided and abetted the Nazis in their invasions of Europe.

It is because of the implementation of this unquestioned concept that such excesses, in my view, extreme excesses against the liberties and the rights of the American people and our American democratic tradition that utilization of Nazi genocidists took place.

I think the atmosphere, what Chief Justice Douglas called the miasma and the pall of fear which hung over our society for virtually more than two decades accounts in no small part for such utilization. There are most certainly instances in the Government of coverup. There are almost certainly instances of delay and protracted delay, and there are——

Mr. EILBERG. Can you name names and cases?

Mr. ALLEN. Yes; I can, and I certainly shall. I have done it already on the record in my writings, and I have many many more. But the point I am making in response to your question, Mr. Chairman, is that I believe the more logical and the more broad and longer point of view must start from examining the basic premises that underlie the utilization of such creatures as these Nazi war criminals.

Mr. EILBERG. Now, we share a very deep concern over this matter, and we sit here and you sit there. You know of the interest

of the subcommittee which really came into focus around 1973. Much of the activities have developed since then.

Mr. ALLEN. Yes.

Mr. EILBERG. Now, what more should we be doing, what should other elements of the U.S. Government be doing in this matter of Nazi war criminals?

Mr. ALLEN. First of all, I must say without the work of your subcommittee, without the work of its chairman, without the work of Ms. Holtzman, I would say beyond a peradventure of a doubt there would be no interest other than a momentary passing one.

I do believe that the courage and decency and honesty of certain former INS officials who have also raised an outcry about this is also a factor. I also believe that coincidental with that the proven maledictions, malfeasances, and misfeasances, and a conspiracy within our Government at the highest level, namely the Gestapo which operated out of the Oval Office of the White House, no less, also adds to the flavor and atmosphere so that the people of America are now more open to consideration of this issue.

I think without the work of this subcommittee, however, that would not be the case.

I also think the media, the daily press, radio and TV have played an extremely important probative role in realizing what is in front of us.

I might say by analogy that the process of democratic perigation that Jefferson talked about so often was never realized in the Watergate case. There was never a full implementation of that. Watergate was bought off by a deal, by the granting of a pardon to the undicted coconspirator. We cannot allow this to happen. The issue of Nazi war criminals in the United States and your subcommittee, Mr. Chairman, and the rest of your colleagues on the subcommittee, it is really in your hands.

People like myself, journalists, writers, investigators, researchers, and the moral, highly morally motivated people such as the people who came here from Philadelphia, the concerned lawyers and concerned educators, particularly the leading role the judicial organization has played on this question, without them too this issue would never, ever, be examined. But I do believe that you have the powers of subpoena, am I not mistaken?

Mr. EILBERG. Yes.

Mr. ALLEN. I do hope that you judiciously but firmly and fairly use those powers. Because I do not have such powers, and neither do the journalists whom I have cited who are extremely talented people. They do not have these powers. You have these powers, and I can only say to you, good luck in the use of those powers.

Mr. EILBERG. Mr. Allen, you stated that you have studied the judicial proceedings which INS has instituted in the last couple of years. Can you give the subcommittee your candid opinion on how efficiently and effectively these proceedings have been handled?

Are you of the opinion that the INS trial attorneys are equal to the task of prosecuting these cases against top notch defense attorneys with extensive trial experience?

Mr. ALLEN. Yes, that question has come up, as you well know and I well know. And the criticism has been made by very knowledgeable people, former practicing attorneys, trial attorneys,

judges, lawyers, researchers, and my impression from particularly certain circles of this criticism is they take a rather dim view of the trial experience of the presently reconstituted special task force, whatever it is calling itself these days, in the INS.

My own personal view of this matter is that there have been positive developments in the INS. I think that those positive developments, notwithstanding the obvious lack of trial experience, should be allowed to settle, but at the same time it should be allowed to settle by a constant but critical help from you at all times.

I also believe that there is great merit in the proposal, for example, of the concerned lawyers and judges from Philadelphia. There is great merit in their proposal that special counsel be called upon by the INS to assist them which has, as you know, as it has been done in the past and can be done in the future, I think that meritorious proposal requires consideration, because it is a positive one.

I think any role which is positive and helpful should be welcomed and not particularly critically rebuffed or rejected.

I do hope that the media takes an even more aggressive sense of responsibility in this area. I might add that I have found among editorial colleagues and people whom I have worked with closely in most of the large newspaper organizations throughout the United States, they tend to get a little disappointed. They tend to think that they are going to score any time they want from 50 and 60 yards out. That is not the name of this ball game.

You have to use instead running stuff all of the time between tackle and tackle, so to speak, if I may use the analogy, it's just rough, and you have to keep on pounding away.

I do believe the future of this issue pretty much resides in those hands, your subcommittee, your colleagues, staff, very able and fine staff of this subcommittee, with concerned citizens such as the ones we have already discussed, with concerned ethnic and religious organizations which have expressed concern across the country, and with renewed vigor and sustained vigor by our media whose talents and whose insights are absolutely indispensable to this issue.

I believe that this issue, as I remarked at the outset of my testimony here, is a very highly moral one. We are not simply dealing with legal niceties, we are not simply dealing with legal prescriptions which we must follow, and then be satisfied we have had it. We are not. We are dealing no less than with the past itself in terms of the future.

We are identifying ourselves and declaring, in effect, our solidarity and understanding and sensitivities to the martyred 6 million, and, in addition to that, to the martyred 11 million that were put to specific Fascist death during the period 1939 to 1945 because they happened to have been something less than a superman.

So this issue develops with great moral force on what is the best in our American tradition, our American democratic tradition. Those who would utilize these creatures and their organizations represent forces within our society itself who show what they themselves would do and let me assure you this struggle is not a momentary thing.

It is reflected in this issue and it will go on.

Mr. EILBERG. Ms. Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Mr. Allen, I want to commend you for the very important work you have done in this area.

Sometimes it has been a lonely crusade, but it has been extremely helpful to all of us who are concerned with this issue.

Mr. ALLEN. Thank you.

Ms. HOLTZMAN. I would like to ask you some specific questions.

First, about the statement you made regarding the transplantation of Fascist organizations to the United States, presumably with the complicity of Government agencies. Could you be more specific about that statement?

Mr. ALLEN. Yes, of course.

Ms. HOLTZMAN. I mean what agencies, specifically? Let me rephrase my question.

Specifically what organizations, what agencies?

Mr. ALLEN. What I meant by that was that the degree of complicity is not the transplanting in terms of Government agencies. I have no such evidence, but what I mean by degree of complicity is knowledgeability that certain individual accused Nazi war criminals and collaborators also belong to these organizations which, in turn, have engaged in extensive activities of an extreme right wing, pro-Fascist, pro-Nazi nature.

So that any denial of such activities or any failure to realize the import of such activities by certain Government agencies is completely misleading. I cite, as an example of what the GAO said here this morning, that the CIA was not particularly interested in what charges were made against certain sources, they were going to go ahead and use them.

I believe that the nature of the source for such so-called information happens to be very relevant to this issue and very important to this issue. You can see further aspects of it by examining these organizations.

I will give you a very quick example: The Iron Guard was the storm troop counterpart, in fact, it's even older than the SA in Nazi Germany, in Rumania. There are chapters of the Iron Guard in at least seven cities in the United States. They issue records of Hitler's speeches, they issue recordings of speeches by Nazi war criminals who had belonged to the Iron Guard. They issue publications and they also carry out what has to be called harassment activities within their own emigree circles.

Mr. EILBERG. Harassment amounting, incidentally, to very often violent confrontations.

Mr. ALLEN. That is correct, Mr. Chairman.

Ms. HOLTZMAN. Mr. Allen, with regard to the case No. 10, involving the man who was accused of complicity in experiments in Dachau, you mentioned that he was going to be prosecuted.

Mr. ALLEN. He was on what was called the suspect list of the American prosecution team in Nuremberg.

Ms. HOLTZMAN. Why were proceedings not brought against him?

Mr. ALLEN. I really don't have the definitive answer to that.

Ms. HOLTZMAN. Have you discussed this with the prosecution? You said you had discussions with the chief of the U.S. prosecution forces. What is his answer?

Mr. ALLEN. His answer is that he was simply flown to the United States.

Ms. HOLTZMAN. Is the implication of his answer that he would have brought a prosecution against this individual in the Nuremberg trials?

Mr. ALLEN. I think it was implicit in his answer that, yes, he would have.

Ms. HOLTZMAN. Mr. Chairman, I would hope the staff would interview this prosecutor and find out what the status was of that prospective prosecution.

Mr. ALLEN. I can tell you further, Ms. Holtzman, because it might be helpful, that there were a couple of lists drawn up prior to the trial itself. This individual's name and record hung, that is, they were maintained right up until the time of the trial. You can see that very clearly in reading the proceedings of the trial.

Ms. HOLTZMAN. Thank you very much. I have run out of time.

Mr. EILBERG. Mr. Allen, we are indeed indebted to you, not only for your factual presentation but also for your message which has to be an inspiration to all of us, not only in this room but throughout America.

We thank you very much for your contribution. We look forward to a continuing relationship and hope you will be able to stay with us at least this afternoon in private session with the subcommittee staff.

[A summary statement subsequently submitted by the witness follows the record of this day's hearing.]

Mr. ALLEN. I will look forward to this, and thank you.

Mr. EILBERG. Mr. DeVito, we have run out of time. I hope you will be able to stay overnight and we will be delighted to have you testify first thing tomorrow at 9:30.

I want to acknowledge the presence of the lawyers and educators from Philadelphia who have been so interested in this matter. We welcome your interest.

With that, the subcommittee hearing is adjourned. We will have to go to the floor to vote immediately.

[Summary statement of Charles R. Allen, Jr., follows:]

SUMMARY STATEMENT BY CHARLES R. ALLEN, JR.

Finally, Mr. Chairman and Honorable Members of the Subcommittee, what can really be said about the utilization and often the literal employment of accused Nazi war criminals and collaborators by agencies of the United States Government? I am certain that my rhetorical tone is apparent, for no language can actually express my indignation and unqualified denunciation of such an affront to the American democratic tradition.

Of what possible usefulness to our Government are the genocidists who stand yet as living testimony to the ultimate act of desecration in humankind's history: The Holocaust? By letting such creatures as proven genocidists, self-admitted collaborators and abettors of German fascism during World War II even continue to reside in our country with utter impunity—as the vast majority of them does to this day, we befoul ourselves. We do so not alone before the Six Million Martyred Jews but, let it never be forgotten, before the other Eleven Million innocents—men, women and children of the nations of Europe, the Communists, Commisars, Gypsies and other "untermenschen"—who were put to specific fascist death by the Nazis and their collaborators.

But the systematic employment of any of these creatures—and, as I have demonstrated here today during the course of my testimony, there have been at least 149 of them who, collectively, have been accused of responsibility of varying degree for the genocide of some 2.4 million people between 1939 and 1945; and who have been sought out, used, protected and shielded, employed and consulted by at least 10 U.S. Government Agencies, secretly and behind the back of the American people—is, in my view, totally unacceptable.

Having said as much is, however, not enough.

We must, once having vented our rage and indignation at this cowardly assault on our democratic rights of open government, step back and take a broader, objective and, even in an analytic sense, detached perspective of the entire issue which, at last, is now clearly before us and the public ken.

We are, again in my view, all too much hung up on the notion of "conspiracy." Over the past year or so, wild, irresponsible and, of course, manifestly unprovable, charges of an "Odessa" operating within the Government at large and a "Judenrat" within the Immigration & Naturalization Service (INS) in particular have been leveled from certain sources.

Even the General Accounting Office's (GAO) Report of May 15th is hooked on this preoccupation of a conspiracy which accounts for the now-established fact that, yes, the United States and its Government have proven a haven for criminals from the Nazi past.

Such emotionalism will lead us nowhere except down the dead-end alleys of blind conjecture rather than enable us to determine rationally, as nearly as we are able to do so, the larger answers and truths now embodied in this historic consideration: why has this patently obscene political scandal happened in, presumably, the same America which, as a leader of The Grand Alliance, played an indispensable role in bringing Hitlerite fascism to its fiery end?

I underscore the "why" of the matter rather than the other, natural questions of how they got here, when, what have they been doing since arriving in the United States, where have they been living and other incidental questions for which, in many cases, we do have concrete, irrefutable answers.

What we must consider, address ourselves to is the far more difficult, often subtle and complex problem of why all this has happened. And no devil-theory of history, complete with a mysterious conspiracy, hatched somewhere in the dim past behind some set of bureaucratic doors by officials, unknown, who still are manipulating this matter.

No, history does not allow for such relatively easy approaches as the overall conspiracy. The issue of Nazi war criminals in the United States and their utilization by agencies of the U.S. Government is no exception.

What is wrong about such an approach as the conspiracy? It is not, let me emphasize, that conspiracies do not occur in history. They do, and they have been demonstrated. I do believe that most historians, even the most stringently conservative, would readily acknowledge that Watergate was a conspiracy operating out of the Oval Room in the White House by a President of the United States and an American-variant of the Gestapo.

But we have no evidence that a similar conspiracy was operating at any time over the 33 years of this question. Moreover, I feel strongly that such a plot is not likely to be found, certainly not proved.

Not that there have not been a plentitude of cover-ups, delays, deliberate and protracted evasions and downright falsehoods perpetrated by individual officials and departments of Government concerning both the presence of Nazi political criminals among us and their utilization by those very same Agencies. I have both here in testimony and in many of my extensive writings and investigations on this subject demonstrated this phenomenon on numerous occasions as have other writers and journalists.

I have shown and will subsequently show in my new book that, led by the U.S. State Department, the Justice Department, its INS and the CIA and FBI have all been guilty of flagrantly indulging, deliberately, in such practices.

Yet these acts do not constitute a grand, overall conspiracy. Together they are something far more serious.

For addiction to a conspiracy theory leads to certain fallacies which, in turn, feeds enervating illusions.

Look, the recent GAO Report trumpets, we examined the matter of the utilization of Nazi war criminals and, in its own words, "a widespread conspiracy to obstruct probes of alleged Nazi war criminals (is) not supported by the available evidence

On the surface this conclusion appears to be a rational one, but it is manifestly not. For the GAO then goes on to pile on one neglected area of investigation after another in its 18 months and \$100,000 worth of probing which took its fifty-some odd investigators to Western Europe, Israel and throughout the United States.

In the absence of any studied, proven and independent conclusions of its own, the GAO Report, in effect, says, "See, we can't find a conspiracy but then we can't rule out 'instances of deliberate obstruction' (which I and others have entirely proved) but, since we can't locate a big conspiracy, then we've got to conclude that all of this just sort of happened. Otherwise we're clean and nobody's to blame."

The GAO Report, on this essential, is but the obverse side of the coin of the opportunistic sensationalist who screams "Odessa!" or "Judenrat!"

The broader, unspoken and tacit finale is that the American dream in no wise has been sullied by their presence nor by the utilization of some of the most heinous criminals of the Holocaust by the official Government of these United States of America.

That life goes on and the inevitable material and spiritual progress of the United States is as fixed a star as ever shone in the galaxy of earth's societies since the beginnings of recorded histories.

On the contrary.

The presence and utilization of Nazi war criminals for more than three decades is a direct, material, indeed inevitable consequence and concomitant of the nation's most basic policy since the end of the Second World War, namely the Cold War.

Seen in certain perspectives, the presence of Nazi war criminals here is not, in an historic sense, cause for surprise nor their utilization by Third Agencies, notably Intelligence, cause for incredulity. Indeed, a careful examination of the basic requirements of the Cold War dictated such usage.

Please allow me to state my case.

When our nation adopted the body of policies comprising the Cold War—which, in its quintessence, demanded the containment (by any means) of the Soviet Union, socialist Eastern Europe and any emergent, purportedly 'communist' forces in the Third World—the very strategy and tactics of such an undertaking were bound to attract Nazi war criminals to our orbit as so many copper filings jumping into a magnetic field.

Nazi war criminals and their collaborators, it must not be forgotten, were the ultimate practitioners of the ultimate violence of a really serious anti-communism: the Holocaust itself when Six Million Jews and additional millions of other untermenschen (inferior races) were systematically slaughtered in the name of anti-communism for global strategic purposes.

Consider for a moment's reflection the following conclusion drawn by the Hoover Commission Report of 1954 after initial considerations of where the Cold War was taking the American people:

"There are no rules in such a game. Hitherto acceptable norms of human conduct do not apply. If the United States is to survive, long-standing concepts of 'fair play' must be reconsidered. We must learn to subvert, sabotage and destroy our enemies by more clever, more sophisticated, and more effective methods than those used against us. It may become necessary that the American people be acquainted with, understand and support this fundamentally repugnant philosophy."

Already a part of such admittedly "repugnant philosophy" even then was the deliberate, careful and systematic use of Nazi war criminals. That any means justified an unquestioned end—namely, the global containment (by any means) of communism—necessarily includes such usage.

And we now know that such accommodation to repugnance has been the revealed excesses of the CIA and FBI. The CIA has with utter impugny violated its original 1947 charter which supposedly was to bar the CIA from carrying out activities domestically against American citizens. That Agency illegally spied on American citizens opposed to the Vietnam War and infiltrated and disrupted dissident groups, compiled a computerized "Index" of some 300,000 U.S. citizens (all under Operation Chaos); illegally participated in the Plumbers operations of the Watergate subversion; planned the assassinations of eight foreign leaders, five of who died violently; defiantly failed to carry out a presidential order to destroy its stocks of lethal poisons (including cobra venom and a shellfish toxin sufficient to kill 55,000 people); laced the drinks of unsuspecting persons with LSD and other mind-altering drugs, resulting in at least one suicide; conducted illegal and massive letter openings of private mail of some 216,000 U.S. citizens, trailed American citizens, bugged journalists and authors, carried out wire-tappings and burglaries; practiced simulated biological warfare against millions of subway-riders in New York City; the CIA even produced pornographic films in which its central character was made up to resem-

ble an Asian leader, President Sukarno of Indonesia, whose regime was ultimately violently overthrown in a massive genocidal upheaval which many sources claim was engineered in part by the CIA. Even the findings of the so-called Rockefeller Commission, intentionally conceived to lessen the criticisms of the CIA, had to conclude officially that the CIA had committed crimes against American citizens.

The litany of illegal acts and criminal violence done against the American people and the U.S. Constitution by the Federal Bureau of Investigation runs equally long and brazen as those of the CIA. Suffice it to note that recent revelations of the FBI's complicity in the murder of a civil rights activist by one of its KKK informers and the defiance of the current Attorney General of the United States of a court order that he comply with the law (in the Socialist Workers Party case) underscore the present state of the art, if that be the term for what many have called the American police state.

Against such a background, need there be any surprise that, as I have charged and can demonstrate, some 10 U.S. Intelligence Agencies—headed by the CIA and the FBI—have over the past 33 years utilized at least 149 proveable Nazi war criminals who, taken together, are charged with responsibilities for the genocide of some 2.4 million women, children and men between 1939 and 1945?

Such testimony should not elicit surprise but rather rage.

There have been other consequences of such utilization. Consider, as I have testified, that 15 fascist organizations which served as Fifth Columns for Nazi Germany during the 1930s throughout Central and Eastern Europe and did in fact provide the leadership of those Nazi collaborators—who were indispensable to the Hitler Germany conquests and genocides of Europe and the USSR—have been transplanted here in the United States.

My research and investigations show that some of these groups—all, without exception, practitioners of force and violence—were brought in and re-established by several of the major accused Nazi war criminals living in the United States since 1946.

[Some material necessarily deleted at this point in accordance with House rule XI, cl. 2]

Whether intentional or not, the net effect of the insemination of fascist genocidists and their transplanted Nazi organizations in our midst has been to add considerably to the base for mass fascism in the United States. The extremes of reaction—organized racism, anti-Semitism and bigotry in force—have been provided "natural" allies to fuel their spurious anti-communism campaigns whose usual targets for attack are the democratic struggles of the American people.

From my observation and analyses of the available evidence, it is quite clear that the greater bulk of the 286 Nazi war criminals who found haven in the United States after World War II has been (and continues to be) politically active on the Far Right of the spectrum in their respective ethnic groups.

[Some material necessarily omitted at this point in accordance with House rule XI Cl. 2]

The CIA, FBI and certain officials of the INS told GAO investigators, in effect, that everyone has been chasing communists over the past three decades and this explains why no one took an interest in the Nazi war criminals among us. That they were chasing communists, sometimes real but more often than not, imagined, is not in dispute. But such apologists and stonewallers neglect to add that they did not neglect war criminals of the Holocaust at all; they used them in their witch hunts.

And this kind of primary social evidence goes much further in helping to account for genocidists' presence here than some overwrought TV script about an Odessa operating behind the closed doors of the nation's capitol.

Thus the obscene phenomenon of Nazi war criminals living in our own country must not be seen in isolation or as random aberrancies or deep-dyed plots. Rather the issue must be examined within the total context of our times; as an inevitable, consistent, even indispensable element of an institutionalized McCarthyism at home and the Cold War policies which we have mindlessly and futilely pursued from 1946 to this day.

The hidden use of these criminals of the Holocaust carries, moreover, deep risks for our own health. These Nazi war criminals, each and everyone, mastered certain indescribably cruel talents; the talents of genocide, torture, mass reprisals and terrorization of entire populations. Evidence shows that is exactly what they have often been used for, as sources of information and teaching for the para-military and counterinsurgency programs of the CIA, the NSA (National Security Administration), the DIA (Defense Intelligence Agency) and for the combat intelligence operations of the Navy, Air Force. Such employment started in the late 1940s, as

evidence which I and others have uncovered demonstrate, and has continued down to the very recent past.

It is a regrettable fact that the terror operations of the Nazi SS and their collaborators in the North Caucasus during 1941-1943 have been carefully passed on to our own armed forces in the 1950s. There is an intimate relationship to the rape of Krasnodar and My Lai in Vietnam though some 30 years separate them.

Such cynical employment of these creatures is bound to rub off on us; indeed already has to an alarming extent as I've noted briefly in summarizing the deleterious roles of the CIA and the FBI.

Ultimately this issue must be resolved as a profoundly moral challenge. The recognition of the broader social and political contexts is indispensable to sorting the fact from fiction and assessing exactly the culpable individuals and Agencies in our Government in determining how and why Nazi war criminals have found a refuge in the United States.

It is in our own best interests that we identify precisely those individuals, those institutions and those forces which have secretly, behind the backs of the American people, used Nazi genocidists. There is an inevitable corollary here: they would most assuredly fasten an American form of fascism on us if they could.

But the ultimate resolution is moral. Our moral commitment is to the martyred Six Million, systematically murdered solely because they were Jewish. A crime against humanity that is unique in the annals of humankind. Our moral commitment is to the additional millions, put to specific fascist death by these war criminals and their Nazi masters who assault all sense of decency by their brazen presence among us.

Our moral commitment is to the innocents of the past because we know, from history, that the past is never dead, that it is not even past.

Our moral commitment is to the warning of the philosopher, Santayana: "Those who do not remember the past are condemned to relive it."

If we fail to heed this injunction, we condemn millions of innocents yet unborn to the ultimate goal of fascism: war.

We must learn before it is too late the conclusion of a survivor of Aushwitz who did instruct us: "The globe is too small to hold both mankind and fascism."

We must determine that there will never be a second Holocaust. That there will be no war flowing from policies which employ Nazi war criminals and the methods of these criminals, or their goals.

We must determine that there shall be no posthumous victory for Adolf Hitler.

Now—before it is too late, while there is still time (and there most certainly is the time!)—we must determine to expunge this sordid scandal from our midst, to take all due processes to bring these Nazi war criminals to justice and to rout the individuals and instruments of government responsible for their employment and protection. To make certain that they pay for their crimes against the American democratic tradition.

[Whereupon, at 1:18 p.m., the subcommittee was adjourned.]

ALLEGED NAZI WAR CRIMINALS

THURSDAY, JULY 20, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
CITIZENSHIP, AND INTERNATIONAL LAW
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 2237, Rayburn House Office Building, Hon. Joshua Eilberg (chairman of the subcommittee) presiding.

Present: Representatives Eilberg, Holtzman, Hall, and Evans.
Also Present: Garner J. Cline and Arthur P. Endres, Jr., counsel; Raymond P. D'Uva, assistant counsel. Peter Regis, legislative assistant; and Alexander B. Cook, associate counsel.

Mr. EILBERG. The subcommittee will come to order.

Today the subcommittee continues its hearings into the Immigration and Naturalization Service and the third agency involvement in the prosecution, or lack thereof, of alleged Nazi war criminals residing in the United States.

Yesterday, we heard from witnesses representing the General Accounting Office and others on this topic and some very interesting disclosures were made.

Today, we will hear from former INS officials who were closely involved in the handling of Nazi war criminal investigations and litigation. We will also hear from Immigration and Naturalization Service and State Department officials involved in administering the Displaced Persons Act and Refugee Relief Act, under which many of the alleged Nazi war criminals entered the United States.

As yesterday, my only request of all of the witnesses is that they be open, frank, and candid in their testimony. Also as yesterday, the use of specific case names must be avoided pursuant to the House rules and so as not to prejudice any ongoing investigations or prosecutions.

Our first witness will be Mr. Anthony DeVito, former INS investigator, who was intimately involved in the investigation of a number of these cases.

Please step forward, Mr. DeVito.

We look forward to your testimony with interest.

First, we will ask you to take the oath as we are asking all witnesses.

Mr. DeVito, do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DEVITO. I do.

Mr. EILBERG. Thank you.

Mr. DeVito, we apologize to you for not being able to take you yesterday as we had planned, and we would welcome your comments on the GAO report we started off with yesterday, and any other observations you might make, particularly in the area of interference with the investigations into alleged Nazi war criminals in the United States.

You may proceed in your own way.

TESTIMONY OF ANTHONY DEVITO, FORMER IMMIGRATION AND NATURALIZATION SERVICE INVESTIGATOR

Mr. DeVITO. First of all, I want to thank the committee for inviting me here. I looked forward to it. And I certainly don't want to trouble the committee with some old stories which have appeared in press publications, et cetera, but if you would care for me to go over it lightly, I shall be glad to do so to enlighten you more.

I think I will do just that. Feel free to interrupt me at any time.

Contrary to general belief, my interest in Nazis did not stem from the Immigration and Naturalization Service. It stemmed from other experiences, and I held onto that thought throughout the years. It was only up to 1972 when I got assigned to the female Nazi case up in New York that I really got interested and actually did some work on it.

From that point on, it was my feeling that my superiors and the Immigration and Naturalization Service were not interested in pursuing Nazi war criminals here in America.

It certainly can be said without any question that this was not what you would call a team effort. I encountered obstructions galore, left and right, wherever I went. As you know, the file cabinet that maintained the records on a case I was working on was broken into overnight. It was reported to the District Director and he did nothing about it.

Witnesses who testified were threatened. Three females, and then my wife received threatening phone calls.

We had two distinguished witnesses from abroad who were depleted of funds and although funding was readily available both at the New York office and the regional office, this funding was withheld and it is true I made a collection at the New York office.

The success the investigation had in that case was not what you would call an organizational move. It was done in a sneaky manner, I admit.

Mr. EILBERG. Which case are you talking about?

Mr. DeVITO. The Hermine Braunsteiner Ryan case. The achievement in that case must be credited to a lot of small people who took chances really to initiate and motivate the interest of both the German and the Polish Governments. But, nevertheless, in view of the atmosphere, drastic steps were needed. The result, extradition.

Now, while working that case a member of the public provided me with another Nazi case, and a member of the New York Times was present there; he was aware of what was going on. I went to retrieve the file on that matter and I found out it was buried in Detroit. Whatever was going on from that point on was well aware of to the New York Times reporter who helped retrieve this buried Nazi case in Detroit.

Mr. EILBERG. What is the name of the Times reporter?

Mr. DeVITO. His name is Max Siegel, of the New York Times. He covered the Ryan case. When I retrieved the file, first of all, it was not at the New York Office where it should have been. Aliens, files are normally kept in the district where the person resides. While I was knocking my brains out for the file in New York and Detroit, thanks to Max Siegel, he said, "Tony, stop knocking your brains out in Detroit, your man lives out in Mineola." Sure enough, he lived out in Mineola, he never lived in Detroit, so the question was, what was that file doing in Detroit for 6½ years?

Now, there have been a lot of immigration echoes; also it comes from the General Accounting Office investigators, files get lost. It's not true. This file was a secret file. When files move about, whether it's within the district or outside of the district, throughout the country, signatures are required. That case was secret, and there had to be a record at the New York office where it went to once it left the New York office. And to give you the genesis of that case, that case really started back in 1965 when the Soviet Union filed an extradition request for the man.

As you know, it was denied based on no treaty.

As a result of the publicity, Immigration decided to conduct an investigation, and that probe had hardly gotten off the ground when it was ordered terminated from an official in the central office.

Now, I had received instructions along those lines throughout the years. What this investigator did, he indicated that in the file, pursuant to instructions so forth and so on, investigation is terminated, and from that point on you could just imagine what happened to the file. Eventually it wound up in Detroit.

So, 6½ years later I examined the file, and I wanted to find out what is this file doing in Detroit. Mind you, this is ongoing at the same time that the female Nazi case is going on, and I couldn't find any evidence or any justification for that buried file in Detroit.

Eventually it was determined that he lived in Mineola.

Well, I was busy with the female case, so we didn't give the second case too much attention. It was stored in the female Nazi file cabinet and for added security the whole cabinet was relocated inside the trial attorney's office.

During December 1972, I had to take some annual leave, and the trial attorney absented himself from his office on that date. On this day, the chief of investigations at the New York office saw fit to invade the trial attorney's office in our absence, and remove the Detroit Nazi case from the file cabinet.

When I came back to New York, incidentally, I was telephoned that evening by the trial attorney telling me of the recent developments and when I came back on duty after annual leave I was told by the chief clerk in the trial attorney's office and the trial attorney again what had transpired in my absence.

I immediately looked through the file, and I saw that it had been reassembled. Incidentally, I did not recover the file at that point. I didn't see the file for some 2½ months thereafter. I would like to correct myself. Once the chief of investigations removed that file I didn't see it for 2½ months later. The only reason why I saw it 2½ months later is because Max Siegel, of the New York Times, decided to write an expose on the matter, and he forewarned the U.S.

attorney in Brooklyn what he was doing, and he forewarned the District Director in New York what he was doing.

As a result things started to move. The file was, in fact, produced. The District Director, in order to save face, told the press, "We are giving it to the famous Nazi investigator in this female case, Tony DeVito, and he is going to pursue it from that point on."

I went through the file, upon recovery I went through the file, and I did not see this investigator's memo on file in there. I did see that the file had been somewhat disturbed and rearranged. I did not see that notation in the file ordering that investigation closed out. This has reference to the investigation "memo for file" authorizing him to close that case out 6½ years ago. That was gone.

There was a great desire to have me removed from the Ryan case starting from 2 weeks after my assignment to it. I am sorry, let's substitute the female Nazi case in place of Ryan. There was a great desire to have me removed from it, and we certainly didn't get the cooperation from our superiors. That is putting it too light. Periodically, 2 weeks, 3 weeks, 1 month the tune was repeated, "Tony, your subversive caseload is falling behind, we need you back there, when are you going to finish with them?"

Here is a worldwide probe, and they want me to get a case out in 2 and 3 weeks; how silly.

Once Judge Mishler in Brooklyn ruled in the extradition case the documents were hardly cooled off. The decision was hardly off the press and the trial attorney was out sick or burying his brother or something. Incidentally, the trial attorney for an extended period of time during that case was out 90 percent of the time either sick, on vacation, or other. As you know, great pressures were put upon him from other sources and he absented himself I would say for 90 percent of the time.

So that when Judge Mishler ruled in the case, how quickly the District Director called me in and, incidentally, when Judge Mishler ruled on that case, ruled that that party be extradited, I noted the saddest faces in Immigration in my life. The chief of investigation in New York and the District Director. Real sad face, real sad faces.

Anyway, no sooner had Mishler ruled than I was ordered back to subversive.

Now, when you work an extended case of that nature, there is a lot of clean-up to do. You have to return property you borrowed, books, maps, charts, et cetera. I didn't get that sort of an opportunity. In being ordered back to subversive cases, I was told to take the other Nazi case with me. In so doing they assigned me a subversive caseload, and your work is controlled through the priority system; namely, a three by five card form is attached to each opening investigation, and through that form it will govern the time that you are allotted to complete an investigation.

It could be 30 days, 60 days, or 90 days. When they hit me with this caseload of subversives, all of the cases had a priority date on them except the Nazi probe. The Nazi probe did not have no priority, which, in effect, meant you worked that when you get time. The trouble is there is no time, because as you finish these cases you are assigned another one and another one and another

one in its place. So, in effect, by assigning me the subversive caseload, it was a way of directing my energies elsewhere.

So we have the female Nazi obstructionism galore, we have this other, second case where we experience obstruction and in a legal way, by the way. This is quite legal.

But I think in another matter we have a different kind of a situation. In January 1973, thereabouts, I was contacted by a social security investigator who told me he was investigating a case in Jersey for his office.

During the course of that investigation, he had run into Nazi allegations which led him to review the file at the Newark immigration office. In so doing, he was puzzled and amazed why the Nazi allegations had not been fully investigated.

During our first initial contact by telephone, I was not able to answer his questions, I told him I would obtain the file and to keep in touch with me.

After several conversations by phone, he visited me in New York. He did something which every decent law enforcement officer should do on his own initiative. He directed an inquiry to the Berlin document center. Lo and behold, the check came back positive; first lieutenant, first SS lieutenant.

So, with this information, he hurried up to New York; we had a long meeting. I commended him on his efforts. He practically presented me with a closed case. I immediately sent the file, together with documents, plus an extensive bit of data to the Newark Immigration Office urging them to open up an investigation.

I didn't trust the Newark office. The Newark office was never to be trusted in my career. I provided the committee with copies of the Washington Monthly, which has quite an interesting story in it dealing with Newark, with Immigration and Newark, and you can see the obvious infiltration of organized crime at the Newark office.

In short, I did not trust it, I waited several weeks then I recalled the file to see if an investigation was, in fact, underway. When I reviewed it, that Berlin document center check was gone, together with a number of other documentation which I did not list. This social security investigator had provided me with quite a sizable packet of documents.

I held onto the file, not satisfied what was going to happen to it. I had lists of Nazis in my possession as a result of the female Nazi publicity, organizations and individuals who were providing me with names of other Nazis. So that when I was returned back to my subversive caseload, a new picture emerged.

They wanted the Nazi lists. They wanted to know what I had done on it, who gave it to me, and so forth and so on. It has been published before and I will confirm it. I felt as if I was returning to an enemy camp.

I didn't get greeted as a hero, but instead as an enemy, believe me. As if they let Tony DeVito loose, and they weren't going to allow him to get loose on any other matter.

Well, one word led to another and I did my best to preserve those Nazi lists. I had no alternative but to go to see my friend, Robert Morse, U.S. attorney in Brooklyn. I told him what was going on at Immigration in New York and that if no one interceded, we can forget about any further Nazis being removed from this country.

He got disturbed, dictated a letter in my presence to Deputy Attorney General Sneed. It was a good letter requesting an investigation of the New York office.

He provided copies of that letter to the individuals involved; namely, the chief of investigations in New York and to the District Director in New York, and actually provided me with a copy of it, after he had requested and gotten my approval. He asked if it was all right if we present these people with copies. I said, "Fine, let's get everybody up on board." So that the ground rules were set and established, and I waited and I waited and waited for something to happen.

I waited for the FBI to look into the matter of the witnesses and my wife being threatened. I expected some sort of a response.

In short, nothing happened, not much, anyway. Having exposed myself, put myself out on a limb, put my career on the line, the time came for me to retire prematurely, and I did just that. So that when I left that case that I sent to Newark, I wrote it out, I remember the date, June 28, 1973, "Attention invited to the attached serious Nazi allegations concerning this individual, urged investigation be undertaken, and so forth and so on."

I sent the whole file to Newark. Once I retired, the press picked up certain stories. The press media got into the act. Thanks to Ms. Holtzman, she got into the act, and thanks to the chairman, you certainly made a valuable contribution. I congratulate both of you.

Little by little we are assembled here today, still trying to determine what happened with Immigration throughout the years.

Now, these are merely three cases. I am not a genius. I may be handsome, but I am not a genius. These are three cases that came to my attention through natural events. I did not look for these cases and I am telling you what happened to them.

Now, God knows what happened to a number of others. I don't know. But we certainly, or Immigration certainly deserved a thorough investigation throughout the years, and the trouble is it has not been forthcoming. The present GAO study is a sad report, which I will go into, if I may.

Mr. EILBERG. You are referring to the GAO report?

Mr. DeVITO. Yes, sir, I am going to lead right into it at this point. You can feel free to interrupt me at any time for any questions, incidentally.

Now, I just wanted to describe the atmosphere and how these irregularities could have taken place throughout the years. Let me describe the atmosphere.

I joined Immigration in 1951; I came off the U.S. Treasury enforcement agents list. It was a sad day when I accepted that appointment. I should have stayed on the list and demanded an appointment with the Treasury Department but, nevertheless, I hooked up with Immigration.

Throughout my career, I kept hearing stories about this fellow being indicted, that fellow under investigation, this guy landed up in prison, and these are all Immigration officials, by the way. Somebody was always winding up dealing with the law in some way or other, or this fellow got fired for this or that. And that was the theme.

Now, you have heard of Operation Clean Sweep. That is the dandy of them all, prostitution, immigration selling documentation, infiltration of organized crime. You name the irregularity, and it happened in Clean Sweep.

We have a situation here that was coming apart at the seams during the Watergate case. The then Justice Department refused to cooperate with the congressional subcommittee looking into the matter. Finally, the counsel for the panel charged the Justice Department with coverup of corruption in Immigration, here it is right here, I provided the members with copies of it.

Here it is right here.

That case was never resolved satisfactorily. It was kept in midair. There should have been a lot of people going to prison on this one. So we had an open affair during the Watergate era and what did Commissioner Chapman do? He pulled a shrewd move. He rounded up 50 subservient investigators, sent them down to the border to sweep up Operation Clean Sweep.

Now, could you just imagine sending down a load of juniors along the border to investigate where the corruption lay; namely, in the top and middle level, middle management level and sending down all of the juniors to investigate their potential superiors. That is what happened, and Commissioner Chapman got away with it.

He did that, closed it out, and we heard nothing else from Clean Sweep except some squawks subsequently thereafter.

Now, what happened during the Nazi probe when Immigration's lack of activity started to come to the surface? Chapman pulled another deal. He had an investigation unit at the New York office which they called the Internal Investigation Unit, to conduct an investigation, nice, quiet investigation. And they looked into it, and you must recall Immigration was under fire then, not only through members of this committee, but through the press, media, and the public as well.

Having conducted an investigation they found a clean shop, no, nothing wrong with Immigration, they have been pursuing, no obstruction, they have been pursuing Nazis throughout the years. Another in-house investigation.

Then I notice, Mr. Chairman, that you requested the GAO to look into the Immigration picture, and right after you did, another investigation takes place, indeed, this is known as the Carey report. Another in-house job, and another whitewash. I don't know what brother Carey's expertise is, but I assure you it is not on Nazis. In all of these investigations, nobody came to Tony DeVito. I was their main catalyst, wasn't I? Nobody came to me to ask me questions, hey, where did the difficulties lie, what happened, nothing, nobody. So what kind of investigations have we got here?

We have investigations that were conducted for a purpose and nothing else.

Mr. EILBERG. Mr. DeVito, I think we better recess to go over and vote and we will be back in just a few minutes.

Mr. DeVITO. Sure.

[A short recess was taken.]

Mr. EILBERG. The subcommittee will come to order.

Mr. DeVito, would you proceed, and to the extent you can, try to summarize as much as you can.

Mr. DeVITO. Mention was made of our three whitewash reports, namely the one that closed out, Operation Clean Sweep, the Carey report, the 1975 Immigration in-house investigation, and there is just one other report I want to mention, which went into the composition of the GAO report itself.

Now, when Robert Morse requested that investigation it took some time to get going. I had retired, feeling that nothing would occur. After I retired I was called by an FBI agent at the New York office. I live in Westbury, Long Island, N.Y., which is quite a distance from New York City proper. I was called by the agent and told he is doing an investigation for the Deputy Attorney General. I said, yes, I knew about it. Finally we are moving. He asked, can I interview you? Fine, I said. When do you want to come out here?

He asked, "Don't you ever come into New York?" There was no great desire for him to get off his butt and come to my house, which is a proper procedure for any law enforcement officer to do. You don't have the individual make an appointment when he comes into New York. He won't move. Well, I was anxious to get this thing going. So I volunteered to come to New York, spent the whole day down there. I also volunteered to bring in witnesses and my wife, those witnesses who were threatened during the Nazi female's case, but he wouldn't have it.

He says, no, no, I haven't got time, some other time we will do that. So I went down there and spent the whole, something like 7 or 8 hours at his office, and needless to say, I gave him an earful which included information about the female lawyer's attorney who was getting data from inside Immigration, and that's a sore issue because we have in this case the CIA working with a reverse twist. When the story broke in the United States on that female Nazi case, Immigration was caught off guard.

The public became aroused. The press had a heyday. How could this "wardress", SS wardress wind up in America? So that at the beginning the public clamoured for action. Then somebody at Immigration apparently called on the CIA saying, look, we are stuck, we need this conviction record in Austria in order to get going. We have not got it, the Austrian Government refuses to relinquish it, and the female refuses to grant us a waiver. In short, the CIA was called upon to obtain Mrs. Ryan's Nazi criminal record, a conviction record in Austria and so they did it.

How they did it, I don't know.

No question about it, it was an illegal act.

This was not known outside of the Service. This was not known to Robert Morse who processed the denaturalization phase of that case. So it was kept secret. The deportation case got under way after she consented to denaturalization. It was introduced as evidence and nobody knew about it.

Finally, when the foreign witnesses started to come in and tore this case apart and really exposed the female Nazi's background during World War II, defense counsel got a little concerned, I imagine. In short, he was fed the lone possibility to save his client from being removed from the United States; namely, that the CIA had procured her record and, therefore, the fourth amendment

angle was presented or was made available to defense counsel, which didn't work.

At the extradition phase, when she had practically one foot on German soil and one here in the United States, her defense counsel was provided with more inside data, namely the names of people down in central office and abroad, American personnel abroad, who can testify that the CIA obtained the female Nazi's conviction record in Austria.

The names went down the list central office personnel and Immigration, who can verify that, and this thing came out in a packed courtroom at the extradition hearing. The press section was loaded. The public was present, and here we have a CIA operation exposed.

Now, this is a violation. This violation, when we first discovered it in October, months, something like 6 months before, it was reported to the District Director. It called for an FBI investigation. Instead, after presenting the formal complaint, we were called into the District Director's office and told that the security violations that we had reported, and when I say "we" I am talking about the trial attorney and myself, there would be no investigation on that security violation, and that is where it stood.

So then I went down to the FBI office and talked to the agent and told him about the security violation had not been pursued and also told him about the irregularity in the Detroit burial of another Nazi case which he readily admitted, saying he had reviewed the file and was aware of it. I provided that FBI agent with solid evidence of wrongdoing implicating the Immigration and Naturalization Service. After that, he continued his investigation and I never heard anything of it until it appeared in the GAO report.

Now, there are some things that are not readily known; namely, that after that investigation was undertaken there were two quick removals from the Immigration scene. One down in the central office, and the District Director in New York suddenly decided to retire 6 months before time, which he admitted to the press.

So there were some results as a result of that FBI probe. Now, in the GAO report we have reference to four investigations, Operation Clean Sweep, the Carey report, we have the 1975 Immigration in-house investigation and the FBI report, which claims they found no wrongdoing in Immigration.

That is a phoney FBI report. That is misinformation, and if you take a look at that report that agent could not have possibly written or given Immigration a clean bill of health with the information I gave him, impossible. So there you are, you have four phoney reports, including the FBI report as a basis for or as a justification General Accounting Office personnel presented to substantiate their feelings about no conspiracy, and Immigration was a clean house.

Now, I would like to go paragraph by paragraph and page by page, but I realize that is impossible. You people have been through an awful lot. But I will answer any questions you want to on the report and give you my feelings on it.

Mr. EILBERG. Mr. DeVito, we may not have the time. We don't have the time to do that adequately. I would appreciate, however, your going over it carefully and giving us a memorandum of your reactions or comments to any section of that GAO report. It trou-

bles us substantially, and we are anxious to find what your reactions as well as the reactions of other people who have been in the field.

Mr. DeVITO. As you know, I was waiting to be approached by GAO personnel after the probe had gotten off the ground. Six months later they finally contacted me. Three personnel appeared at my home. One from Connecticut, one from Jersey, one from Washington, and I was ready to give them a load of documentation, advice, guidance, and what have you and, in short, I didn't feel as if they were interested in documentation, I didn't feel as if they were interested in getting at the facts.

I think they came to my home with a preconceived conclusion, which I explained in my analysis and everything I said was generally pooh-poohed. As a matter of fact, they came out with some challenging statements; namely, that that is where the so-called Immigration echo was heard, Immigration files get lost, shuffled around, and I can tell you why that happened in the Nazi case, it could not possibly happen because of the signature aspect.

I was ready to provide them with other leads, other personnel they should interview, to get at the crux of their investigation. They would not have it. They appeared to be very reluctant. As a matter of fact, they came there and asked some silly questions, went way out of their way, got involved in a lawsuit, got involved in a grand jury probe, which they had no right to get involved in.

Nevertheless, I told them certain information in confidence, which they violated. In short, gentlemen, these three gentlemen, these three people came to my house in a deceitful manner. They practiced deception, because several days later I was called upon to affix my signature to a memorandum supposedly reflecting the results of our interview. And at the top of the heading I saw the reason for their visit: "To discuss the validity of the statements in Blum's book."

Now, what in the devil has that got to do with the GAO report and why wasn't I notified before time that was the reason for their visit? This is the first time I heard that the reason for their visit was to discuss Blum's book. This is, in brief, private enterprise. GAO has now entered the picture of censorship, I see. Anyway, I was discouraged and I refused to sign the thing.

First of all, it's erroneous, it is not my language, it is very wrong. They got the picture completely confused. They allowed me 2 hours and then left.

Mr. EILBERG. Mr. DeVito, I wonder if you would take the time to perhaps point out two or three of the objections you have to the GAO report. Can you do that at this time? Just give us an idea of the kinds of things that you find in error, in your opinion.

Mr. DeVITO. Sure. First of all, the widespread conspiracy simply does not hold with the basic contents of the report. It appeared as if they wanted to whitewash Immigration. They did manage to come across some data that was rather damaging. So this widespread conspiracy just doesn't hold.

I found difficulty reading this report. For one thing, we go right at the outset. We look for their mandate, which, namely, is your letter of January 13.

Now, according to that letter, which is dated January 13, 1977, you specifically requested that they investigate. There is no authorization in this letter or from anyone that instructed them to go beyond January 13, 1977, and if you look at their report they went beyond that. They went right up to date. As a matter of fact, they went overseas. I don't know why they went overseas. What are they going to find out from foreign governments about whether or not a conspiracy existed in Immigration all these years?

Mr. EILBERG. The main thrust of that letter was to request a review of what had happened over all of those years since the end of the war, and why nothing had happened, apparently, in the Immigration Service in terms of denaturalization or deportations when it was commonly known that many alleged Nazi war criminals had entered the United States.

Mr. DeVITO. Precisely, precisely. I see no authorization to go beyond that date. Perhaps a few months, yes, but, good heavens, they went something like 5 years beyond that point. No, they went several, several years beyond that point. So that anything that was incorporated after the letter of mandate, as I call it, was unnecessary, totally unnecessary. The funds, I question the authorization for that funding.

Are we going to call on General Accounting Office to return these funds? Are we going to call on the personnel who took these trips abroad?

These are questions we should be concerned with.

Anyway, we start off at this point.

Now, let me say one thing on behalf of GAO personnel. They were given a difficult job. It is a difficult job, no question about it. You are getting some outsiders to come in and you put them in the middle of a lot of vultures and wolves; it really is tough, so let's recognize that. Nevertheless, they didn't even come close to the mark.

The other agencies made fools out of them. You could not possibly operate, certainly Internal Revenue could not possibly operate unless they have access to the firms' records, to make a determination as to whether any illegalities were involved. The GAO, in my opinion, were entitled to have access, full access to FBI records, CIA records. And there should have been more effort made in that direction and it could have been accomplished overnight.

But, to be hand-fed certain select material to show that they are innocent, certain select material they were handed as the report indicates and, naturally, you are going to get a wrong picture.

If you go to our prison population throughout the country, you will find out practically everybody in prison today was framed; they are innocent. And that is exactly what happened with this GAO report when they went out to the other agencies.

CIA, FBI, State Department, the Department of Defense, they all had a hand in it. They all were responsible. This all happened at a time when the government was not being run by the White House, certainly not by Congress who represents the American people, it was being run by a group of people who chose and made decisions on illegalities which later cropped up during Watergate.

Mr. EILBERG. Mr. DeVito, we have a number of questions we would like to ask you but we renew our request that you perhaps

again examine the GAO report and let us know in some sort of summary form, if you can, all of those additional complaints or criticisms that you may have about it.

I am referring now to the newspaper article, a copy of which you gave us, in the New York Times dated December 8, 1973, entitled, "Ex-Chief Immigration Trial Attorney Quits Abruptly," referring to Vincent A. Schiano. There is a statement in this article which I would like to ask you about.

It reads:

Once Mr. DeVito related the search for witnesses in Europe was delayed when Immigration's then Chief of Investigation, Carl G. Burrows, cabled the United States Embassy in Vienna and told it to disregard instructions from Mr. Schiano unless they were routed first through Washington. Mr. Burrows, who has since left the Service, was not available for comment.

Would you react to that statement, please?

Mr. DeVITO. Yes. You see what happens in Immigration when a case reaches the trial attorney level, the normal investigative management and routine is removed. The trial attorney then comes under the direct control of the general counsel. But in this particular case, Burrows, who was mentioned in there, continually stood on top of the case, continually stood on top of it, wanted to know everything. When we sent some simple, logical leads abroad, he stopped it. He instructed the officer in charge in Vienna to ignore our requests and return it to New York and have New York route it through his office.

Mr. EILBERG. Do you have any idea why he did that?

Mr. DeVITO. Sure; I will tell you why. It's quite simple; he wanted to keep abreast of the situation. He wanted to know what the trial attorney and Tony DeVito are doing up in New York, because he tried to discourage us from undertaking that case right from the outset.

Mr. EILBERG. Have you been able to find out what his motivation was, why he would do that?

Mr. DeVITO. The Nazi female's lawyer was being fed material right along in that case, and if we were to direct our inquiries through him, then the central office personnel would know what is going on in the case, and advise the counsel accordingly. You see, Mr. Chairman, in my view, there was no question that there was a fix in the Nazi female's case. There was a fix just as sure as I am sitting here now. Namely, go ahead and yield, consent to the agreement to relinquish her citizenship, and we will give you a superficial deportation hearing, well, a super, super.

The deportation hearing they got wasn't expected, especially when the foreign witnesses appeared on the scene.

Mr. EILBERG. Mr. DeVito, you have mentioned pressure was exerted on the trial attorney in the female Nazi's case from many sources, and that there was a desire to remove you from that case.

Can you be more specific?

Mr. DeVITO. Well, the trial attorney was under investigation. He was sick. It was getting the best of him. He absented himself, as I said, about 90 percent of the time. If they found any irregularities, why didn't they either do it before or after? Why did they wait for the Nazi case to come about? If they removed me, the case was broke. If they removed the trial attorney the case, like when I say,

broke, I mean it was defeated, it would result in an unsuccessful Government action.

That is what they were looking for, to remove the trial attorney and myself. Insofar as a fix was concerned, nobody told the trial attorney, nobody told me. Not that we would go along with it.

Mr. EILBERG. Earlier you referred to U.S. Attorney Robert Morse. I am wondering, was there an investigation conducted as a result of U.S. Attorney Morse's request and what were the results of that investigation?

Mr. DeVITO. Yes; the investigation did take place. Do you remember when I told you after I retired I got a call from the FBI Office. It did take place. I spent 7 to 8 hours with an FBI agent. For them to come out with a clean bill of health on Immigration simply does not hold, ladies and gentlemen, and I only found out the results of the investigation here in the GAO report. A clean bill, they gave Immigration a clean bill.

Mr. EILBERG. Mr. DeVito, you have leveled a variety of accusations against the INS and other Government agencies, charging obstruction and other impropriety with respect to investigations on alleged Nazi war criminals.

With respect to the allegedly missing interview summaries of the 12 Majdanek witnesses in the Ryan case, can you provide the subcommittee more details on the circumstances surrounding the disappearance of those summaries, and what was the extent of investigations into their disappearance?

Mr. DeVITO. To the best of my knowledge, and I believe there was never an investigation for the disappearance of those summaries. As it happened as I said, there was an overnight break-in of a combination type cabinet. That means the opening of the cabinet could only have been undertaken by certain people that had the combination. Now, the trial attorney and I discussed this, who it might be, and we agreed who it might be.

I revealed the name of the official down at the New York Immigration Office, I told it to the FBI, and why. I wish I could tell you, and I will if you ask me, but it would be very embarrassing to the official. Yes; the investigation never took place. As a matter of fact, you can see here in this December 8 article whereby the District Director in New York said they didn't give either the trial attorney or Tony DeVito credence.

Mr. EILBERG. The information you have available, would you privately convey to me and our subcommittee staff and let us know what the full response would be?

Mr. DeVITO. Surely.

Mr. EILBERG. Now, with regard to the Ryan case also, you noted that vast amounts of money were expended in her legal defense. What do you feel was the source of these funds and can you present any evidence supporting that theory?

Mr. DeVITO. Well, as you recall, Weisenthal answered that question. You may recall it was my suspicion about the expenses of the attorney and costs for his traveling abroad rather freely. It just didn't coincide with the total income of both Mr. and Mrs. Ryan. As you know, last year Weisenthal discovered the foundation, tax free foundation, entitled, "Hermine Braunsteiner Ryan Defense Fund."

No; I couldn't look into it because, as you know, I am limited. I am retired. I would like to look into a number of these things, but Wiesenthal came up with it. It was in the press.

Mr. EILBERG. Do you have any idea who may have contributed to that fund?

Mr. DeVITO. I think a lot of rightists and Nazi minded individuals are contributing to that fund.

Mr. EILBERG. But you have no specific information as to names?

Mr. DeVITO. No; I have no specific, no. As a matter of fact, other than what Wiesenthal announced in the press, I have no specific information.

Mr. EILBERG. I will ask one more question and then yield to Ms. Holtzman at that point.

You charge instances of missing files as you have said, with respect to the case of INS Newark district office. Was an investigation into their disappearance conducted, and, if so, what were the results?

Mr. DeVITO. When you say disappearance, when I left the Immigration scene and retired, thereafter I don't know what happened. I merely can tell you that when I called for the Nazi case in Jersey, the data that was provided me by the social security investigator was missing from the file; namely, the Berlin Document Center check that he wisely undertook on his own. That was gone.

Also, I felt as if other documentation was likewise missing because he handed me a lot of documents, and when I recalled the file the second time it just didn't seem right. Something was definitely wrong.

Also, I wrote a two-page memo when the social security investigator come up to me in New York during the Ryan case, two pages, and I noticed that page 2 was there, but page 1 was missing. The person who brought that to my attention was a GAO representative himself.

Mr. EILBERG. Was there an investigation into this matter?

Mr. DeVITO. Well, you are asking me something when I was not on the job. In my opinion, there was no real investigation at that time. As you know, GAO covered that and brought it out as well. There was no investigation.

Mr. EILBERG. Ms. Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

You identified at the outset of your testimony a Chief of Investigation. Let me rephrase that. You identified an Immigration officer as having ordered a halt in the investigation of a case of someone, I believe, who lived in Mineola.

What is the name of that Immigration official?

Mr. DeVITO. Wilbur Flagg.

Ms. HOLTZMAN. What was his title?

Mr. DeVITO. He was in the investigation section under Burrows.

Ms. HOLTZMAN. And how do you know that he ordered a halt?

Mr. DeVITO. Sid Fass told me, the investigator assigned to the case originally back in 1965 told me that. He came to me in an apologizing tone and said, "Gee, Tony, I was told to close it. Bill Flagg called up and told me to close it, and I closed it."

Ms. HOLTZMAN. Was any reason given?

Mr. DeVITO. No.

Ms. HOLTZMAN. Did you tell this to the GAO?

Mr. DeVITO. GAO didn't ask me. They didn't appear to be interested in any good, solid evidence, guidance, information; they were interested in Blum's books, as you know, to make a determination as to the validity of the statements contained in Blum's book, as we found out a few days later after the interview.

Ms. HOLTZMAN. Did you tell GAO about the reassembling of the file in this case when you retrieved it from Detroit?

Mr. DeVITO. I may have. As a matter of fact, in my answer to, for refusing to sign the memorandum that they gave me, I set out a case-by-case history of the Nazi case that we are talking about, told them where to start, what happened, who can verify it. I think I gave them the full picture on that case, and I urged that they start their probe with that matter. Incidentally, all members, I furnished Chairman Eilberg with a copy of my objective, frank and objective analysis of that report, and each and every committee member is welcome to have a copy.

Ms. HOLTZMAN. Now, perhaps I missed your testimony, but what was taken from the file cabinet when it was broken into in the case you mentioned?

Mr. DeVITO. Statements of foreign witnesses, statements of witnesses, survivors. You see, the case was blocked at that point because the defense counsel had presented his case, and he was ready to move for a decision, namely, he wanted a waiver and he wanted a suspension of deportation in the case.

We were rather stuck in getting witnesses, and we did, that is, thanks to help we got from the outside, not inside Immigration, outside people who deserve credit, who guided a number of witnesses to us, survivors, and it was the Warsaw Ghetto uprising group that came forward with a number of witnesses, and I estimate, as I said before, to the best of my knowledge, that roughly about 12 survivor summaries, and the trial attorney wanted those summaries too, so that we can carry on the deportation case and, as I told you, I left one evening and came back the next morning and a batch of summaries were missing, roughly about seven.

Ms. HOLTZMAN. Without naming the person you think is responsible, do you have any explanation for why the files were missing or taken?

Mr. DeVITO. You mean those summaries?

Ms. HOLTZMAN. Yes.

Mr. DeVITO. Precisely, yes. I think a fix was in the case. I think the defense counsel had gotten together with central office personnel and told an agreement had been reached whereby he was to go ahead and consent to denaturalization since you can't buck Morse in Brooklyn. Go ahead and consent to denaturalization. We will go through a superficial deportation hearing, your client will be granted a waiver, deportation will be suspended and she will be able to regain her citizenship several years later.

That is what I think.

Ms. HOLTZMAN. Who was head of the New York office at the time that you were concerned about that?

Mr. DeVITO. Sol Marks, at that time, and perhaps the committee would like to be apprised about the *Lennon* case, the *John Lennon*

case, where Immigration tried to shaft John Lennon and his wife, and all efforts and energies were directed toward that case.

If we had got a fraction of that cooperation from Immigration superiors in the Nazi female's case, why it would have simplified our task much greater. And, incidentally, as a result of the deposition stage in the lawsuit filed by the Lennons, I presented the committee with a copy whereby Sol Marks admitted he lied to the press in the *Lennon* case.

Ms. HOLTZMAN. Now, with regard to the witnesses who were threatened in the trial that you talked about, and the fact that your wife received telephone calls, what efforts did you make with respect to obtaining protection for the witness and what was the response?

Mr. DeVITO. There was only one thing I could do; that is an FBI matter. I reported it immediately to the FBI through Sol Marks, and I waited for an investigation to get underway. I found out that an investigation did get off the ground. Two witnesses were interviewed, one who received mail as well and then after that, as I said, it died out. The agent retired and nothing else was heard of it.

In the meantime I had alerted another witness and my wife, told them chances are the FBI is going to talk to you. Try to remember what happened precisely. FBI never showed up. They finished that investigation and I thought when I got called down to the FBI office concerning Deputy Attorney General Snead's investigation, I offered to bring my wife and the other witness. He wasn't interested. Some other time. To this date they have not been interviewed.

Ms. HOLTZMAN. Mr. Chairman, I don't have any further questions of the witness. I just want to state that he has done a very important service in his concern for these cases, and I want to commend him for his concern and his interest.

Mr. EILBERG. Thank you.

Mr. DeVITO, we have some more questions for you, but I would reiterate that we are anxious for you, to meet, when you can and when it's convenient, with the subcommittee staff to fill in some of the blanks, particularly those that cannot be testified to according to rules of the House.

Mr. DeVITO, with regard to another case I note that no record was kept of the testimony given by another individual during his naturalization proceeding in Detroit. You attribute this omission to the decision of a Detroit district INS examiner not to keep a record. Based on your experience, is it normal procedure within the INS or that particular district office not to keep a record of testimony received in naturalization proceedings?

Mr. DeVITO. It is commonsense and logic to keep records of all testimony in a denaturalization proceeding. The fact you point out one case of missing documentation, as time went on we found out that that was a common ailment with Immigration files throughout the years.

Mr. EILBERG. What do you think prompted the decision on the part of the INS examiner in that case not to keep a record?

Mr. DeVITO. I find it unusual and unacceptable, contrary to policy and good judgment.

Mr. EILBERG. You have made charges of an alliance involving certain alleged Nazi war criminal and the FBI and CIA in aid of

those agencies post-war anti-Communist efforts. Could you please elaborate on these alliances, including any facts you have to substantiate them?

Mr. DeVITO. Yes; it was not my job throughout the year to accumulate facts, but certain things came to my attention.

Now, I am going to violate a committee policy and I am going to mention the name of Gen. Reinhardt Gehlen. He was an intelligence officer on the Eastland front for the German Army.

Mr. EILBERG. Where is he now?

Mr. DeVITO. He is in Munich. He has one foot in the grave and one foot above it. He is in Germany.

Now, in 1945 the Russians were out for Gehlen because of some of the atrocities that he ordered in Russia and some of his tactics contrary to the rules of warfare.

Well, Gehlen, in short, made his way to the American Zone with his records on Russia and sold the Americans a bill of goods. The Americans, contrary to General Stornig who was the head of Eisenhower's G-2 intelligence, contrary to the English advice, contrary to the French advice, the Americans embraced Gehlen. He was brought to the United States where he stayed for a year and was interrogated supposedly on Russian matters.

Mr. EILBERG. Interrogated by what agency?

Mr. DeVITO. I don't think the CIA was set up then. I think it was the OSS or perhaps a group of illegal, an illegal group who took it upon themselves or patriots or call them what you may. I could mention some names. They are dead, by the way. Allen Dulles was one of them.

Now, they kept Gehlen here for a year and the Russians, right after the War ended, pointed to certain agreements between the allies for Gehlen. We lied to the Russians. We told them we don't know where he is. All of the time he was in Washington.

Now, what eventually happened, incidentally, some of these butchers we brought over here, especially Ribbentrop's deputy, how great were these people? These were people on the losing side. If they were so brilliant how come they lost the War, especially in the East? We didn't need these people. We could have gotten to the moon without them, and this country would be better off without them.

In any event, Gehlen was here for a year and then was sent back. The CIA set him up in business which, in reality, was nothing but an extension of CIA operations. What I am giving you appeared in a number of books, by the way, respectable authors, and the CIA and Gehlen worked near Munich for a number of years thereafter.

As time went on, Gehlen kept sending men in the Ukraine, in Russia and they kept getting slaughtered. So, his contribution to the intelligence picture is, indeed, in doubt. But what really came about during Gehlen's administration was it turned out to be nothing other than a conduit for Nazi war criminals on the run. This was one of the purposes of the thing. It got so thick and heavy at one time that the German newspapers were making jokes out of it, also comic strips. The allies were looking for war criminals, when they were being provided cover in Gehlen's receiving organization, protection documentation, money, and comfort.

Mr. EILBERG. With respect to the Detroit case, you stated your initial review of the file revealed an optimistic attitude about a case on the part of the INS investigators assigned to it, but despite the promising leads uncovered the investigation was terminated at the direction of the Assistant Commissioner for Investigations in Washington.

Can you elaborate on these discoveries?

Mr. DeVITO. Surely. What happened in Detroit, you see here is another reason why the Immigration echo, and also echoed by GAO won't work. While that file was buried in Detroit, the New York FBI conducted an investigation of their own during the 1967-68 ERA. In connection with that investigation they had occasion to review the Immigration file which was then located in Detroit.

They requested the Detroit FBI office to conduct what is known as an auxiliary. That FBI official in Detroit went to the Detroit Immigration office and reviewed the file and indicated that in his report, specifically that the subject's file was reviewed at the Detroit INS office. He set forth a lot of good data, really good data, heavy data, that was certainly worthy of exhausting.

For instance, there was a film, a very damaging film on this individual, I read. Also other names of people that apparently had made distance from the man. That is what I mean by leads. Leads, good FBI leads from within the Latvia emigree group. And also that film that was circulating amongst them.

Mr. EILBERG. You don't know how the circumstances of the disappearance of that film came about?

Mr. DeVITO. You mean how it got from New York to Detroit? I don't know. There was no record of it at the New York office. And there should have been because it was a secret file.

Mr. EILBERG. And there was no investigation made into that matter?

Mr. DeVITO. No, not to my knowledge, no investigation was ever made.

Mr. EILBERG. Although this question is not directly in point with the specific nature of this hearing, I would like to inquire as to the current attitude of the West German Government on prosecuting Nazi war criminals. We had some testimony yesterday on this matter.

In an article you wrote for the Baltimore Sun last year you stated that the West German Government had shown "little interest" in extraditing Nazi war criminals and that "prospects for more zealous execution of their laws are dim." Would you please elaborate on those statements, and do you feel there is any interest today on the part of the West German Government in prosecuting these individuals, particularly in view of the fact that the Ryan case has dragged on for so long?

Mr. DeVITO. The West German judicial system, when it came to Nazi war criminals, has been a joke. It has been the subject of conversations and ridicule throughout the years.

People who will support that feeling are Wiesenthal, who has been criticizing them and head of the International Survivors groups. There have been other journalists. Also, if you look at the record, likewise verifies it. And let's face it, gentlemen, the feeling

in West Germany is not anti-Nazi, or not to prosecute Nazis, because whether you like it or not, they have survived.

They have, since we handed back the reins of government to West Germany. We have a number, and numbers and numbers of Nazi war criminals in vital areas of the Government and in the various States. We do have it. So that it's no wonder that West Germany is not rather anxious to pursue Nazi war criminals; they want to forget.

Mr. EILBERG. Mr. DeVito, during your trip to Russia, you visited Eastern Europe, including the Soviet Union on this question of alleged Nazi war criminals.

From press reports it appears you have received complete cooperation from those governments. Can you tell us the extent of your investigation in those countries?

Mr. DeVITO. Sure. First of all, understand one thing: We know that I am associated with a grand jury probe on a Nazi matter. That has been publicized, which is to say the defense lawyer notified the press, so I am not revealing anything new.

This is going to touch on, if you people think that we have now solved the solution, you are wrong about the precise thing that Immigration is and the State Department are engaged in, you are totally wrong. And I will tell you why.

I have knowledge of a Nazi case whereby the system presently being employed didn't work in this Nazi case. Namely, a report, once the so-called summary and the request had gone to Russia, the Russians supposedly came back and said that this person, this Nazi, was a member of a punitive battalion and they refused to give any further evidence in the matter.

Well, if you understand the Russians and the Poles, this is not them. When we speak about atrocities, we saw in documentaries, in books we are speaking about the places where these atrocities took place. So, when that kickback came back from Russia, the State Department relayed it to Immigration. Immigration was looking for any excuse to close out the case. They closed it out immediately.

Through the Freedom of Information Act they provided the defense counsel those documents, State Department provided them, and this defense counsel, in an erroneous matter, is flashing them before the press media saying, "See, my man is clear, my man is clear", and turns around and sues the U.S. Government, me and others, such as you know.

Now, I was not satisfied with that response from the Russians. I said this is not the Russian Government. I made an effort to contact certain Russian officials. Also the Poles I knew since 1972. We have been going back and forth, but the Russian Government, I didn't know.

It was arranged whereby I met some of their officials, and I requested permission to go over there and, if I go over there would they cooperate and, in short, they said, yes.

Incidentally, Russian officials are well aware of Ms. Holtzman, and Congressman Eilberg, and they hold you both in high esteem, and they are on top of the situation on these hearings and other matters.

So, I did go over there, and I brought back a load of documentation, I got wonderful cooperation from the Russians and the Poles in Warsaw. I brought back a load of damaging documentation. I went there a second time, 2 months later, brought back more. Again excellent cooperation.

I can tell you in all sincerity we have a prima facie case, in my opinion, of not only denaturalization but deportation and prosecution.

Mr. EILBERG. Did you interview eye witnesses behind the Iron Curtain?

Mr. DeVITO. No; I did not. I did not interview them. I made an effort in that direction and they told me I would be wasting my time. But the last time I was there I was told if I want to I could go. But I said if there should be a third time for me going over there they would make these witnesses available. I have already forewarned them that in all probability an assistant U.S. attorney will travel over here, will interview these witnesses and determine their value to the ongoing proceedings. And they are aware of that, and they were willing to cooperate.

Yes; they would make these witnesses available to me, even though, mind you, I am a civilian, I have no authority, I am a civilian. I went there on nongovernmental funds.

Mr. EILBERG. I would like to observe at this point for the record, Mr. DeVito, that when our subcommittee visited the Soviet Union in 1975—

Mr. DeVITO. Yes, very good, congratulations.

Mr. EILBERG. We, Ms. Holtzman and I and our subcommittee extracted a commitment from Michel Malyarov, the Deputy Procurator of the Soviet Union, that he would allow our investigators to go into the Soviet Union and interview eyewitnesses. He also agreed that those eyewitnesses, would be permitted to come to the United States to testify in appropriate proceedings. That was in 1975.

It has taken up to this week to implement those arrangements. In fact, the members of the special unit are at this time in the Soviet Union interviewing witnesses.

Mr. DeVITO. They have gone, they left.

Mr. EILBERG. It has taken over 3 years, since we secured that commitment, for our Government to act on them. It's taken too long.

Mr. DeVITO. Right. Yes; that was a good move on your part.

Mr. EILBERG. Ms. Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Mr. DeVito, on the case that you indicate the State Department said there was no information, were you able to find, derogatory information on this individual during your trip?

Mr. DeVITO. Definitely. We got the goods. We have a prima facie case of denaturalization and prosecution.

Now, I am a civilian. I can't do it, obviously. But it's up to the U.S. attorney's office now to move. They have been provided with the ammunition.

Ms. HOLTZMAN. Mr. DeVito, one more question.

Did you have any experience during World War II that led you to feel particularly concerned about how our Government was responding to these cases of Nazi war criminals in the United States?

Mr. DeVITO. During World War II?

Ms. HOLTZMAN. Or afterwards.

Mr. DeVITO. After. Well, I have kept abreast of the situation throughout the years. And I was aware of the superficial attitude of the West German judicial authorities concerning pursuit of Nazi war criminals. There was a gentleman by the name of Oscar Karbach of the World Jewish Congress who gave me the key data that I was looking for all of these years.

In response to these criticisms, the West German Government kept increasing their funds for, their judicial funds, especially concerning war criminals, and what they did to advertise this effort, to counter the criticism, they kept sending investigating magistrates abroad, especially in the United States here and there, and this gave off the impression that West Germany was indeed interested in pursuing and keeping up to their promise to pursue them to the end of the Earth, so that survivors would be called into the German Council and elsewhere and statements were taken from them.

These survivors would naturally go back home and say, look at the West German Government officials, they are really interested in doing this and that, but Oscar Karbach told me don't believe it, Mr. DeVito, this is a picture. He, as a matter of fact, in the Ryan case, he asked me what are your plans in the Ryan case, and I said, we are going for a strong deportation case, and we are going for an extradition request through the Polish Government behind the scenes.

He said, do that, he says, don't mind the German effort; he says, it's all a front. Well, it just so happens that in this particular case, thanks to an investigating magistrate by the name of Halbach, Germany did, in fact, go all out. But I say in all sincerity Germany got moving in the case after it was known Poland was interested in her extradition and West Germany really did Ryan a favor by moving.

Ms. HOLTZMAN. Thank you.

No further questions, Mr. Chairman.

Mr. EILBERG. Mr. DeVito, we are indeed very grateful for your contribution here today, and it is our intention to follow up with the suggestions and leads you have provided us.

Once again, we invite you to be in touch with our subcommittee staff. We know you have only scratched the surface, you cannot do that much in an hour or so, but we would like to pursue the matter and, with your cooperation, we will be better able to exercise oversight over the Immigration Service, which is also our job as well as your interest.

So, thank you once again, for coming.

Mr. DeVITO. Thank you for inviting me. Keep up the good work.

Mr. EILBERG. Thank you, sir.

Our next witness will be Mr. James F. Greene, former Deputy Commissioner, Immigration and Naturalization Service.

While he is coming up to the witness stand let me say that we have known Mr. Greene for all of our time in the Congress and

seldom have we had contact with a person who has greater integrity and greater knowledge. He has on some occasions contributed to our work, and we are delighted to see you again, Jim, and hope you are enjoying your retirement and wish that you were back here helping us with this very serious job.

TESTIMONY OF MR. JAMES F. GREENE, FORMER DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Mr. GREENE. Thank you, Mr. Chairman.

Mr. EILBERG. You may proceed with any statement or summary that you wish, and then we have a number of questions we would like to ask you.

Mr. GREENE. Mr. Chairman, I do not have a prepared or written statement.

I am pleased to be here. I hope I can contribute something to your investigation. It certainly warrants a full disclosure.

I have read the General Accounting Office report. I find no major differences with their findings.

Mr. EILBERG. Mr. Greene, we have a little problem. I forgot to swear you, so would you please stand up for a moment, please?

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GREENE. So help me God.

If I may continue, the report, as you are well aware, because this was made to you, indicates that subsequent to 1973, starting in 1973 and up to date, the Immigration Service has put a great deal of emphasis to do those things that probably should have been done many years ago.

Many of those changes were implemented by me. I was Acting Commissioner starting in the latter part of March 1973, and for a period of about 9 months. Then I became Deputy Commissioner.

Since I left I understand further changes have been made. For the period prior to 1973, I have some difficulty recalling the reasons for delays, or inaction.

The General Accounting Office investigators met with me at my home and we spent a number of hours going over the situation. I reported to them as best I could recall those events that transpired that I had something to do with or had some knowledge of.

So, with that very brief statement, I am prepared to answer your questions as best I can.

Mr. EILBERG. Do I understand that you have no serious quarrel with the GAO report; is that your testimony?

Mr. GREENE. I think it is a fair report. I think they had a very difficult job. I believe they have accomplished the goal of what they were endeavoring to achieve. So I have no real problem with it.

Mr. EILBERG. Mr. Greene, as we both know, there were numerous delays in the State Department in responding to your, and I might add my own, requests to have eyewitnesses in foreign countries interviewed. Yours also went unanswered for months, if they were ever answered at all.

Can you comment or speculate on the reasons for this delay? Was there an outright opposition to raising this issue with foreign

countries, particularly Eastern bloc countries? Was it a lack of interest?

Mr. GREENE. Yes; I believe from my standpoint there was a lack of interest. Certainly a number of requests were made and followups were made, and we did not receive the information or the affidavits or the documents that we needed. I think the General Accounting Office in its report referred to a period that they asked us not to attempt to obtain things from the Iron Curtain countries.

Mr. EILBERG. Where is that stated in the report?

Mr. GREENE. In the General Accounting Office report, they commented that the State Department admitted to them that there was a period during which they asked INS not to raise the issue of getting witnesses from the Iron Curtain countries.

Mr. EILBERG. Can you speculate on the reason for the delays?

Mr. GREENE. I can only guess they were bureaucratic delays. Certainly, it also was clear enough. I think we spelled out the urgency of the matter and responses were totally largely unresponsive. There just wasn't any response in some cases.

Mr. EILBERG. Once again, was there outright opposition to raising this issue with foreign countries, the issue of getting foreign witnesses?

Mr. GREENE. Mr. Chairman, I have no personal recollection of being told that. I do say, referring to the Comptroller General's report, he states that State admitted they had asked us not to attempt to obtain documents from the Iron Curtain countries.

Mr. EILBERG. Mr. Greene, I am reading from part of a letter from L. Chapman, Jr., a former Commissioner of the Immigration and Naturalization Service, dated July 18, 1974, referring to eyewitnesses residing inside Russia. Reading from part of that letter, Commissioner Chapman said, and I quote:

Insofar as the ten witnesses residing inside Russia are concerned, this service requested the Department of State, by letter dated January 24, 1974—

I repeat, this letter was dated July 18, and reference here is made to the Department of State letter dated January 24:

as to the feasibility of locating and obtaining sworn certified authenticated statements from the eyewitnesses through the Consular or other facilities available from said office in that country. Three more letters were sent to the Department of State concerning two specific cases—

And I am not mentioning the names, potential defendants there: and in two of them other alleged War criminals that are under investigation. Attached for your information are copies of all these letters. To date we have not received acknowledgment.

Do you have any observations to make on that statement?

Mr. GREENE. Well, it's factual, and it spells it out. We asked and asked and we got no response. Certainly we couldn't do it ourselves. The documents we required would have to be authenticated to be of any value in either denaturalization or deportation hearing.

Mr. EILBERG. Mr. Greene, can you identify the officers or persons in the State Department you directed your correspondence to on this subject?

Mr. GREENE. I recall there was a Fred Smith that most of my correspondence was directed to. He was the Deputy Administrator of the Bureau of Security and Consular Affairs, as I recall.

Mr. EILBERG. We both know, you know Mr. Fred Smith very well. Did you ever discuss this matter with him as to why he was not replying to your letters?

Mr. GREENE. Mr. Chairman, in all honesty, I can't recall any discussion with him. My observation is that it was just foot-dragging. There just wasn't any action taken.

Mr. EILBERG. During the time that you were Deputy Commissioner, the INS established a Project Control Office in the New York district to coordinate and expedite progress of alleged Nazi war criminal cases. As part of the renewed effort to prosecute these cases, liaison with Israeli officials through the INS Athens office was attempted in 1974.

According to the GAO report, the American Embassy in Tel Aviv recommended that such a plan be first submitted to the Department of State. Also, according to the report, it was not until 1 year later that State Department permission was given to establish that line of communication.

Can you give any explanation for the long delay in obtaining State Department approval?

Mr. GREENE. No; I have no knowledge as to why the delay.

Mr. EILBERG. Did the State Department indicate there might be problems with this type of arrangement?

Mr. GREENE. Not to me, they didn't.

Mr. EILBERG. Mr. Greene, based on your experience as Deputy Commissioner of the INS, and having dealt in that capacity with the various other Federal agencies, to what do you attribute the pre-1973 lack of activities with respect to investigations of allegations of Nazi war criminality?

Mr. GREENE. Within the Immigration Service?

Mr. EILBERG. Yes. Why was there no activity prior to 1973?

Mr. GREENE. Mr. Chairman, that is a difficult question for me to answer. I know of no specific rule or reason. I make a flat-out denial there was any collusion or any concerted effort, to my knowledge, at least, to interfere or delay these cases.

I regret to say that they, to use the term, fell in the cracks. There was no major effort made, no all-out effort. As the Accounting Office also reported, there was a big emphasis on anticommunism programs. Anticommunism programs were getting the money and the investigators. These other cases just were not given the priority.

Mr. EILBERG. Would it not be correct to say were not given any attention at all?

Mr. GREENE. I would not say no attention, because we find some actions taken, here and there, in these cases. But there was not the concerted effort that we mounted in 1973.

Mr. EILBERG. You are, of course, familiar with the allegations leveled by former INS employees—and you have just heard Mr.

DeVito—of obstruction and misconduct by high level INS officials with respect to Nazi war criminal investigations.

What is your reaction to these charges?

Mr. GREENE. I flat out deny them. There have been three in-depth investigations made of this matter. One by the FBI and one by the Internal Investigations unit of INS, which reported directly to me in the Immigration Service. Mr. Carey also made an investigation. Not one of them turned up any evidence, to my knowledge, of any collusion or corruption or hindering or interfering with any of these Nazi investigations.

Mr. EILBERG. Are you saying that the testimony of Mr. DeVito and the testimony of Mr. Allen yesterday are totally without foundation?

Mr. GREENE. To my knowledge they are. I know of nothing to substantiate what they said, at least what Mr. DeVito said. That is the only witness I heard.

Mr. EILBERG. Prior to 1973 and the creation of the New York Project Control Office, what was the extent of central office involvement in alleged Nazi war crime investigations?

Mr. GREENE. Prior to that date, sir?

Mr. EILBERG. Yes.

Mr. GREENE. Well, the Investigations Division controlled some of the more important cases. I know that directives did go to the field office. The actual following of those cases was not done on—what am I trying to say—not done on a total basis. In other words, there was periodic inquiries made and cases were brought in, and that type of thing.

Mr. EILBERG. So there was no central office involvement; do I understand that to be your answer?

Mr. GREENE. I wouldn't say there was none. I would say it was minimal.

Mr. EILBERG. You would say the involvement was minimal in the central office? What sort of activity was there in the central office on this subject?

Mr. GREENE. Well, I am hard pressed to give you a specific answer on that, Mr. Chairman. I was not involved myself. The investigation division operated more or less independent in the dealings with the field on these investigative cases. I have no personal knowledge of exactly what was going on.

I do know from statements made, certain records were brought in, phone calls were made, and I must assume they were made by central office people; ergo, they did exercise or express some directive or some opinion in some of those cases.

Ms. HOLTZMAN. Mr. Chairman, would you yield for a minute?

Mr. EILBERG. Yes, Ms. Holtzman.

Ms. HOLTZMAN. You said you just testified with respect to your personal knowledge. What information do you have with respect to the involvement of the central office in these cases?

Mr. GREENE. Ms. Holtzman, I can only state what I heard testified, that was Mr. Flagg allegedly called somebody and somebody else got a call to bring cases in or route the case. That is the only knowledge I have.

Ms. HOLTZMAN. You have no information aside from what was in the testimony you heard here today about the involvement of the central office in these cases?

Mr. GREENE. I cannot give you any direct testimony on that point. I just do not know. I have no recollection on the point.

Ms. HOLTZMAN. You have no information aside from what you heard this morning?

Mr. GREENE. I have none that I can recall; no.

Mr. EILBERG. Mr. Greene, can you comment on the specific allegations made this morning about Mr. DeVito that Mr. Burrows requested that certain cases be closed?

Mr. GREENE. No. I didn't hear that testimony. I understood Mr. Burrows was instrumental in routing the requests for investigation in through his office. I think it was Mr. Flagg who ordered, if I recall the testimony, ordered the case closed.

Mr. EILBERG. And finally, did you encounter at any time during your tenure any problems with Federal agency cooperation in investigations of war crimes?

Mr. GREENE. No; other than the one we have just discussed at the State Department. There was not a refusal, there was just a delay.

Mr. EILBERG. Ms. Holtzman, do you have any further questions?

Ms. HOLTZMAN. Yes, Mr. Chairman.

Could you go through the dates again of your service with the Immigration Service?

Mr. GREENE. My career?

Ms. HOLTZMAN. Yes.

Mr. GREENE. Yes; I entered the Service in 1941. I came to Washington in 1949 as an investigator and held a number of positions in the Investigations, and then in 1957, I was made Chief of the U.S. Border Patrol.

Ms. HOLTZMAN. Chief of what?

Mr. GREENE. Chief of the U.S. Border Patrol, National Chief of the Border Patrol, and I believe it was 1962 I was made Deputy Associate Commissioner for Domestic Control.

In 1968, I became the Associate Commissioner for Operations. As I said a little earlier, in March 1973, I was made Acting Commissioner for a period of 9 months and, subsequent to that was made Deputy Commissioner in January 1974, and I retired last May, a year ago last May.

Ms. HOLTZMAN. And as an Assistant Commissioner for Operations, let me see if I have the date; 1963, was that correct?

Mr. GREENE. What was the title again?

Ms. HOLTZMAN. Assistant Commissioner for Operations?

Mr. GREENE. It's Associate Commissioner for Operations in 1968.

Ms. HOLTZMAN. OK. Did you have jurisdiction over the investigations that were conducted into the handling of cases involving persons who had violated our immigration laws and were in this country illegally?

Mr. GREENE. Yes.

Ms. HOLTZMAN. Now, you said that there were several investigations conducted into the charges made about the mishandling of these cases by the Immigration Service.

What explanation was given; were you given any explanation for the disappearance of files or the removal of files to Detroit from the New York office?

Mr. GREENE. No, ma'am.

Ms. HOLTZMAN. Were you aware of the charges that files had been improperly moved?

Mr. GREENE. I was aware that Mr. Morse had asked for an investigation in 1973. It was alleged there was mishandling of files, and I never saw the actual complaint because it went to the Department of Justice.

Ms. HOLTZMAN. And you never were given an explanation for this?

Mr. GREENE. No. The Bureau investigated it and, as I understand it, the allegation was not sustained so there wasn't—

Ms. HOLTZMAN. What did they tell you the reason was for the movement of these files from New York to Detroit?

Mr. GREENE. I wasn't told of any reason they were removed, Ms. Holtzman.

Ms. HOLTZMAN. Do you know whether any reason was ever found?

Mr. GREENE. No.

Ms. HOLTZMAN. Were you aware of the charges made with respect to the removal of information from files during the trial in New York?

Mr. GREENE. I understand the allegation was made, and it is my understanding and my recollection it was investigated and there was found no evidence that the records were—

Ms. HOLTZMAN. What did they tell you, Mr. Greene, was the reason that the files were removed?

Mr. GREENE. I have no recollection of every being told anything about the files being removed. Now, I understand that allegation was not sustained.

Ms. HOLTZMAN. You mean you were told that, in fact, no materials had been removed from the files during this woman's trial in New York?

Mr. GREENE. That is my understanding. But that the investigation did not sustain the allegation.

Ms. HOLTZMAN. I didn't ask you that question. I asked you what you were told about the materials that were allegedly removed from the files.

Were you told that there were no files removed or no materials removed from the files?

Mr. GREENE. I do not recall being told specifically that.

Ms. HOLTZMAN. Sorry.

Mr. GREENE. I say I do not recall being told specifically by any one person the results of any investigation. It is my understanding that the investigation conducted did not sustain the allegation that materials were removed from the files.

Ms. HOLTZMAN. Who gave you this report?

Mr. GREENE. I never had a copy of the report.

Ms. HOLTZMAN. Who told you the allegations weren't sustained either orally or in writing?

Mr. GREENE. I do not recall.

Ms. HOLTZMAN. Who had authority to remove files or materials from files in a locked cabinet in a trial attorney's office?

Mr. GREENE. Well, I assume, and only assume, that the District Director is in charge of the entire office and would have total responsibility, and from there on it would break down as to who the files were assigned.

Ms. HOLTZMAN. Do you recall reading the article in the New York Times on December 8, 1973, which contained charges of both Mr. Schiano and Mr. DeVito regarding the missing files, and the improper movement of files, and other matters that might be construed as obstruction of an investigation?

Mr. GREENE. I recall reading that.

Ms. HOLTZMAN. What was your reaction?

Mr. GREENE. What was my reaction?

Ms. HOLTZMAN. Yes; what was your reaction?

Mr. GREENE. As I recall it, it was already under investigation. I am not sure of the period, 1973, that that article appeared.

Ms. HOLTZMAN. December 8, 1973.

Mr. GREENE. I think the FBI initiated an investigation and the matter was put in the hands of the Deputy Attorney General.

Ms. HOLTZMAN. What did the FBI tell you?

Mr. GREENE. The FBI never told me anything.

Ms. HOLTZMAN. Did you ever hear about the results of the FBI investigation?

Mr. GREENE. As I just testified, and I cannot tell you specifically where it came to me, this is a number of years ago, that the matter had been investigated and they did not find or did not sustain the charge that the materials were removed from the files.

Ms. HOLTZMAN. Do you know whether the FBI was the agency that in fact investigated these charges of missing files, and removal of files?

Mr. GREENE. It is my recollection, that it was the FBI. I think it's also stated in the Comptroller General's report that they did investigate it.

Ms. HOLTZMAN. I don't have any further questions, Mr. Chairman.

Mr. EILBERG. Mr. Greene, we have completed our questioning, and our personal relationship remains the same. I must say that, speaking for myself, I am a bit disappointed that you don't know anything about anything concerning Nazi war criminals. It just surprises me a little bit, and I know that you are a very loyal person and I know also that we are not prosecuting or persecuting, we simply want to find out what the facts were and why such a long period went by.

We have all of these allegations from Mr. Allen and Mr. DeVito, and we will hear from Mr. Schiano. You have heard all of these before, and it is just difficult for us to believe that you don't know anything about it.

If you would care to reply to that, you are more than welcome to do so.

Mr. GREENE. Well, I have tried to testify honestly, and to the best of my recollection. As I am under oath, I am only going to give information on those matters that I have a clear recollection or knowledge. If I don't have it, I am sorry.

Mr. EILBERG. OK. Thank you, Mr. Greene.

Our next witnesses will be Mr. Pierce Gerety, former Deputy Administrator of the Refugee Relief Act, Department of State, and also his Assistant at the time, Mr. John F. Reiger, formerly of the Department of State.

If I misstated your title or position, I apologize, Mr. Gerety. Which is Mr. Gerety?

Mr. GERETY. I am Mr. Gerety.

Mr. EILBERG. Sit wherever you wish, that is all right.

Mr. Gerety, I understand you do have a statement prepared.

Mr. GERETY. Yes.

Mr. EILBERG. Before that, do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GERETY. So help me God.

Mr. REIGER. I do.

TESTIMONY OF PIERCE GERETY, FORMER DEPUTY ADMINISTRATOR, REFUGEE RELIEF ACT, DEPARTMENT OF STATE, AND JOHN F. REIGER, DEPARTMENT OF STATE

Mr. GERETY. Yes, Mr. Chairman and members of the subcommittee, as you said, I prepared a short preliminary statement which I will read.

Mr. Chairman and members of the subcommittee, I am happy to accept your invitation to appear at this hearing.

As I understand it, your subcommittee is attempting to determine whether any alleged Nazi war criminals were admitted to the United States under the Displaced Persons Act of 1948 or the Refugee Relief Act of 1953; whether the screening procedures were adequate and whether there was any deliberate effort made by anyone to obstruct the investigative processes where alleged Nazi war criminals were involved.

I can only speak firsthand about the conduct of the Refugee Relief program from June 9, 1955 to its conclusion on December 31, 1956, when the act expired.

[For text of Refugee Relief Act, see app. 1 at p. 172.]

When I took charge of the Refugee Relief program at the request of Secretary of State Dulles and President Eisenhower in June 1955, the conduct of the program was being severely criticized on almost all sides as being excessively strict in its screening procedures, with the result that very few of the 214,000 visas authorized by the act had actually been issued.

It is somewhat ironic to think that now, 23 years later, questions have been raised that suggest we may not have been severe enough. I think the truth is that we did as thorough a job of checking our applicants for visas as was possible, utilizing all the avenues of inquiry that were open to us and all the resources that were available to us.

We had a comprehensive name check procedure for all applicants. We had the cooperation in the investigations of the FBI, the CIA, the Army's Counter Intelligence Corps in Germany and Austria, the Interior Ministry or corresponding agency of the various countries involved, not including, however, the Iron Curtain countries.

The Interior Ministries, of course, had the files of their national and local police and intelligence agencies available to them. We also checked the names of applicants at the Berlin Document Center. In some countries the local police cooperated directly with our staff.

When the investigation file was complete it was forwarded to the appropriate visa office where the applicants were separately interviewed by a visa officer and an Immigration and Naturalization Service officer, who had to concur before a visa issued.

Nevertheless, it must be conceded that, among the 200,000 or so persons who were admitted to the United States under the Refugee Relief Act, there may have been some who were excludable for one reason or another, and who managed to conceal their backgrounds, whether they were Nazi war criminals or common crooks.

However, of one thing I feel absolutely certain, no one was admitted because of any conspiracy to protect Nazis or Communists or any other enemies of our system.

The staff engaged in the Refugee Relief program was large, working in offices in Austria, Germany, Greece, Italy, England, Belgium, France, Holland, Jordan, Lebanon, Japan, Taiwan, Hong Kong, and Korea.

The principal career officer in charge was John F. Rieger, who was based in my office in Washington. He is now retired from the Foreign Service and is here with me today.

I would like to take this opportunity to pay tribute to Mr. Rieger and all of the men and women who assisted us for their unselfish dedication to the job and their loyalty to the United States. I would be shocked beyond belief if I found that any of them had been unfaithful to their trust.

I have read the report by the Comptroller General of the United States, the so-called GAO report, dated May 15, 1978, which you so kindly made available to me.

I agree with its general conclusion that: "It is unlikely that any widespread conspiracy has existed in Federal agencies * * * to obstruct investigations of allegations" that any visa applicants were Nazi war criminals.

Mr. EILBERG. Thank you, Mr. Gerety.

Mr. Gerety and Mr. Rieger, it is not the wish of this subcommittee to re-examine all facets of the Refugee Relief Act of 1953. We are concerned with only one aspect, especially that part of the operation which dealt with the screening of applicants for admission under this act and, specifically, the administration of section 14 of the act.

The final report of the Refugee Relief Act of 1953 submitted by the Administrator of the Bureau of Security and Consular Affairs, Scott McLeod, dated June 15, 1957, gave a complete description of the activities undertaken under that act.

The portion dealing with investigations undertaken under sections 11(a) and 11(b) and 15 of that act, covers over 21 pages of details on the compliance with the law in that regard.

I must now draw your attention to the particular section of the act which concerns us. Section 14, which states:

No visa shall be issued under this Act to any person who personally advocated or assisted in the persecution of any person or group of persons because of race, religion or national origin.

Nowhere in the final report nor in the semiannual reports submitted to Congress by the Administrator was there any mention made of individuals refused under this section 14 provision, no mention at all.

Can you comment on this?

Mr. GERETY. No; I unfortunately cannot. I think Mr. Rieger could probably recall. It's a long time ago, you know.

Mr. EILBERG. Mr. Rieger, please speak up?

Mr. GERETY. Why didn't we mention that in the report? That report was prepared in my office on the Refugee Relief Act.

Mr. EILBERG. Do you have any comment, Mr. Rieger?

Mr. GERETY. We didn't say how many were excluded. I don't know why.

Mr. RIEGER. I was out of the country and at a post when that report was finally concluded. I was not in on the final formulation. I don't recall in the initial preparation there was any specific request made for that sort of information. That is all I can say about it.

Mr. EILBERG. Do you know of your own knowledge, Mr. Rieger, of anyone who was excluded because of the provision of section 14?

Mr. RIEGER. I can say that there were many people who were rejected by the Immigration and Visa officers on the basis of information that was developed through the investigative reports and as a conclusion of their own interviews with those individuals.

Certainly we had many rejections. In fact, so many rejections that, as Mr. Gerety has pointed out, at one time we were criticized for being too careful, too cautious, too stringent.

Mr. EILBERG. I understand that, and I understand his point, but my question is were there any rejections because of section 14?

Mr. GERETY. Could I say I don't recall we kept a record of rejections by cause. That is what I am getting at.

Mr. EILBERG. Well, Mr. Gerety, do you have any recollection?

Mr. GERETY. I mean, I don't remember any specific reason why somebody would be excluded. I don't remember any specific Nazi war criminals, but we certainly got names, checked at the Berlin Document Center, which is where that sort of information would most likely come from.

Mr. EILBERG. Let me ask this: The final report gives six reasons for having refused visas; three, health, illiteracy and labor requirements are fairly obvious; the other three, political security, eligibility, and moral security, I believe, require some clarification.

Can you explain what constituted grounds for referral under the political security criteria?

Mr. GERETY. My recollection is we had lists of organizations that, if people belonged to them, we would not let them in. I don't have a specific recollection of a list of Nazi organizations. Do you, John?

Mr. RIEGER. My only association with that specifically was my previous function in Germany when I was security officer, personnel security office for the High Commission there, and we did then follow all of the screening requirements that had to do with Nazi problems.

Mr. EILBERG. Would you bring the mike closer to you?

Would you repeat that portion pertaining to Nazi criminals?

Mr. RIEGER. Any questions about Nazi association or Nazi activity were dealt with at that time, and we incorporated, as I recall, at the outset of the Refugee Relief program when we established the investigative criteria, those elements with which we were familiar from having dealt with the problem previously under the High Commission in Germany.

Mr. EILBERG. But under the Refugee Relief Act you have no recollection of any cases being excluded for Nazi activity or war crime activity?

Mr. RIEGER. I have no recollection of individual cases.

Mr. EILBERG. Would you expand a bit on your role with the High Commissioner of Germany where the subject had come up?

Mr. RIEGER. As I said, I was in charge of the personnel security branch in the High Commission in which we screened applicants for employment and we rescreened all of the people who had been working for the High Commission, taken over from the military government previously. So we went through the files of all of the Germans numbering perhaps 10,000, 15,000 at that time who were on our rolls.

In the course of that we adhered to and followed the proscriptions having to do with Nazi associations and many, many people were eliminated from employment at that time.

Mr. EILBERG. From employment?

Mr. RIEGER. From employment at that time.

Mr. EILBERG. In Germany.

Mr. RIEGER. Both rejected after they had been employed and also we rejected applicants for employment.

Mr. EILBERG. For employment in Germany?

Mr. RIEGER. Yes; under those criteria and, as I said, we used those criteria later, as I recall. This is all so long a time ago. We used those basic criteria, incorporated them into the standards when we established the procedures for investigation of the refugee relief program.

Mr. EILBERG. To your knowledge, did any of the people that were denied employment because of having been Nazi war criminals appear for admission to the United States under the Refugee Relief Act?

Mr. RIEGER. I have no idea about that, sir.

Mr. EILBERG. Can you suggest how the subcommittee might explore that subject further? How can we look into that at this time?

Mr. RIEGER. I have no idea where those records are, those of the High Commissioner or for that matter those of the refugee relief program. I suppose they are in the Archives, but I cannot be of any assistance.

[Further information was subsequently provided by Mr. Gerety and appears in app. 5, p. 209.]

Mr. GERETY. You might bear in mind, my recollection, John, is that most of our investigations in Germany and Austria until shortly after the end of the program, were really conducted by the CIC, because the Army was still in control as you may remember, in both Germany and Austria during most of the life of the refugee relief program.

It was towards the end of that that there was a peace treaty signed with Austria which changed the facts.

Mr. EILBERG. All right.

Now, going back for a moment to the final report which gives us six reasons for refusing visas, three we mentioned, health, illiteracy, and labor requirements, and I then began to explore with you the other three, political security.

What was meant by political security, Mr. Gerety?

Mr. GERETY. That would be the types of things you are talking about, membership in the Nazi organizations, but also in other organizations. We had, I remember specifically in Greece, a whole list of organizations that were considered to be undesirable from the standpoint of the U.S. security, and every one had to be investigated, and we had the cooperation of the local police in this connection to find out if they had been a member of any of these organizations that we considered to be against our interests.

Mr. EILBERG. Then there was the criteria of eligibility.

What was meant by that?

Mr. GERETY. There is the general law about people being undesirable on moral grounds, for the commission of crimes, the whole set of excludable grounds that are in the general immigration law.

Mr. EILBERG. You mentioned the moral security criteria. Under which of these categories were alleged Nazi war criminals refused admission, or would they have been?

Mr. GERETY. I would think, but I cannot give you a specific case because I don't remember any specific cases, but I would think they would be excluded under the political securities business, members of political organizations that were proscribed by our standards.

Mr. EILBERG. Mr. Gerety, I wonder if you would describe for us the procedures utilized by your agency to determine whether a particular applicant would be allowed to enter the United States. What was the process, and particularly, did someone, somewhere, do a little checking to see whether an applicant was, in fact, eligible for admission.

Mr. GERETY. Certainly. That is what I tried to outline in my preliminary statement. Every applicant had to go through an investigative process, and that involved name checks with all of the agencies, FBI, CIA, whatever the CIC could develop, the local Interior Ministry of Germany, for example, and Austria and the Berlin Document Center, which we maintained, that is, the Government of the United States, where they assembled all information that they could find on Nazi war criminals, and Nazi membership in various Nazi organizations.

All of the names were checked against everything available there. A file was assembled on each applicant with all of the information we could dig out. Then the people were then, there were other problems with eligibility, incidently under the Refugee Act, and one of the ones severely criticized and caused a great deal of the delay, was they not only had to apply and pass all of these investigative checks, they had to be sponsored by an individual and we dealt with all of the voluntary agencies in the United States, HIAS, CRS, and CWS, United Lutheran Service and all of that, Lutheran World Service, I guess they called it.

Their job was to find people in the United States who would sponsor them for residence and give them a job. That was a very, very difficult job to perform.

So that after we had the investigation of the people and the sponsorship, we would—and if the investigation looked all right—we would send it over to the visa officer who would then interview the individual and an Immigration and Naturalization Service officer had a separate interview with them, questioned them about the investigation and then, if they looked all right, that is from the standpoint of the investigative file, if they had passed a health test—and there were a lot of rejections, incidentally, as I recall, on health—and if they had a sponsor they would be issued a visa.

Mr. EILBERG. Mr. Gerety, can you say that there were no persons denied admission because of membership in the Nazi Party?

Mr. GERETY. Could I say that?

Mr. EILBERG. Could you say that?

Mr. GERETY. No; I would guess, without having specific knowledge of any case, that there were people who were denied admission because of suspected Nazi association.

Mr. EILBERG. And your guess is based on what?

Mr. GERETY. My knowledge of the investigations that took place and all of the kinds of material we dug up in these cases.

Mr. EILBERG. What you are saying is you don't remember from your present knowledge?

Mr. GERETY. Sitting here today, I can't remember any specific case of rejection. There were thousands of rejections.

Mr. EILBERG. Including—

Mr. GERETY. Including all of the grounds you have mentioned. Of that I have no doubt. But to say how many, I don't know.

Mr. EILBERG. I yield to Ms. Holtzman.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Just to follow up the line of questioning of the chairman, you pointed out in your testimony that you remembered that health was a serious problem.

You pointed out in your testimony that you remember getting the sponsors was a serious problem. But you have no memory at all with respect to any problems regarding the admission of Nazi war criminals?

Mr. GERETY. No; that isn't what I said.

Ms. HOLTZMAN. Tell me what your memory is on that.

Mr. GERETY. I said we had a list of organizations that would disqualify an applicant for a visa, and these organizations included Nazi organizations, Communist organizations, other organizations, I don't know what I would call them at this distance removed from Greece and Italy and so forth.

All of these organizations were on our proscribed lists. And if the investigation turned up anything in that line, they were automatically refused.

Ms. HOLTZMAN. What about people—

Mr. GERETY. You are asking to me focus on the Nazis as though this was the principal focus. It was not. There were many of them.

Ms. HOLTZMAN. Was it a principal focus?

Mr. GERETY. No; we were focusing on all of the organizations which had been agreed ought to be on the list.

Ms. HOLTZMAN. What about people who engaged in war crimes who may not have been members of any organization that was proscribed? You don't have any recollection of any of those cases?

Mr. GERETY. I assume the CIC would have gotten that or the Ministry in Germany, to the extent they wanted to cooperate, would have gotten it, and certainly the Berlin Document Center maintained by the U.S. Government would have it. That is the greatest repository of information on Nazis.

Ms. HOLTZMAN. Let me turn to the problem of Eastern European refugees. I take it from your testimony there was no effort to obtain any background information from Eastern European countries or the Soviet Union; is that correct?

Mr. GERETY. Not from the countries themselves, but a lot of material was assembled in Austria and Germany.

Ms. HOLTZMAN. What kinds of materials?

Mr. GERETY. Material dealing with Nazis.

Ms. HOLTZMAN. What about?

Mr. GERETY. It was all one Germany then, you know, before the war.

Ms. HOLTZMAN. So that you had all of the files dealing with, for example, atrocities committed by local police at the direction of the Nazis in eastern European countries in Austria and Germany?

Mr. GERETY. We didn't, but I believe the U.S. Government has all of that information available to it at the Berlin Document Center, even today. Now, it does not mean, incidentally, Ms. Holtzman, that every file, every file center has all of the information about every person that possibly had done something.

I say that there are undoubtedly people who could have passed the test by not being exposed as a member of anything.

Ms. HOLTZMAN. I find it hard to understand your testimony, because we are now discovering, of course, that the Berlin Document Center has some information, but certainly not all of the information or even the bulk of information dealing with war crimes committed in eastern European countries or the Soviet Union.

Mr. GERETY. We went to the places that were available to us.

Ms. HOLTZMAN. Right. So you didn't have——

Mr. GERETY. And I say to you——

Ms. HOLTZMAN. [Continuing]. Information aside from what was in the Berlin Document Center with respect to war crimes committee in eastern Europe and the Soviet Union.

Mr. GERETY. No; I said the Berlin Document Center——

Ms. HOLTZMAN. OK, tell me.

Mr. GERETY. The Ministry of the Interior.

Ms. HOLTZMAN. Which country?

Mr. GERETY. Of Germany.

Ms. HOLTZMAN. Yes.

Mr. GERETY. As a matter of fact, and the CIC, which was in control, the Army was running Germany in those days——

Ms. HOLTZMAN. So if you had all of this information, then why were these people permitted into the United States against whom the Government has now brought proceedings?

How do you explain these cases?

Mr. GERETY. I have not heard anybody named as having come into the United States under the Refugee Relief Act who is a Nazi war criminal.

Ms. HOLTZMAN. I think 12 proceedings have been brought altogether. Some of which came under that act.

Mr. GERETY. Did it say that in the report? Your letter says that, but there were no specifications given. All I can say is we brought in about 200,000 people; we checked them all, and if a few, and I admittedly say in my testimony, of course, it's possible some people came in who shouldn't have come in—

Ms. HOLTZMAN. I think we would be on much safer ground, Mr. Gerety, if you would concede the fact that the information that was held in the Berlin Document Center and by the Ministry of Interior and so forth was to some extent limited with respect to war crimes committed in Poland, Rumania, Hungary, the Ukraine, and Latvia.

Mr. GERETY. If that is what you are asking me to admit, of course, I didn't understand your question that way.

I say I don't believe for a minute that the information was complete in those files any more than I believe that the information is complete in the files of the FBI in this country about people who have committed crimes.

Ms. HOLTZMAN. Do you think the information was more complete about persons of German nationality? Would your files have been more complete with respect to persons who lived in Germany or who had German nationality than they were with respect to Polish nationals, or Rumanian nationals?

Mr. GERETY. I would think that is probable.

Mr. RIEGER. Probably.

Ms. HOLTZMAN. Given these loopholes in your files with respect to persons of the Eastern European origin, did you adopt any additional procedures to determine whether or not these persons had engaged in war crimes or did you just use the exact same procedures you used for persons who were German citizens?

Mr. GERETY. I don't think we had any special procedures, not that I remember.

Ms. HOLTZMAN. So you didn't do anything to compensate for a certain lack of information with respect to backgrounds of those from Eastern Europe?

Mr. GERETY. No.

Ms. HOLTZMAN. I don't have any further questions, Mr. Chairman.

Mr. EILBERG. Mr. Gerety, precisely what instructions were sent to your investigative units on complying with section 14?

Mr. GERETY. Mr. Rieger I think ought to answer that because he was in the program right from the beginning and specifically dealt with the intergovernmental agencies here or committee here that settled on the security procedures.

Mr. RIEGER. At the outset of the program we met with the Intergovernmental Committee for Internal Security, which has, I don't know whether it even exists anymore, for that matter, and which consisted of representatives at that time of all of the intelligence and counterintelligence elements in our Government and in Washington.

We presented to them our standards and our criteria under the specifications of the Refugee Relief Act for investigation and they approved them.

We could not proceed before ICIS had approved these standards and methods of operations. Those in turn, when approved, were sent out to the investigative elements we had stationed in the various places Mr. Gerety has mentioned overseas, and those became the standards under which the investigators proceeded on their own in cooperation with the police and the Ministry of Interior elements of the various Governments where we operate.

Mr. EILBERG. I am sorry.

Are you aware a number of individuals under investigation by INS for allegedly participating in the Nazi war crimes entered the United States under the Refugee Relief Act of 1953?

Mr. GERETY. I know that from your letter and from what Ms. Holtzman said.

Mr. EILBERG. How would you explain this in view of your extensive screening efforts?

Mr. GERETY. I think that the screening, to some extent, was imperfect, and will always be imperfect.

Mr. EILBERG. But you have no real recollection of how many persons were denied entry—

Mr. GERETY. No; I don't know that we kept any statistics on numbers refused.

Mr. RIEGER. Oh, yes.

Mr. GERETY. Where would we have put them?

Mr. RIEGER. Those statistics would be available at the various stations overseas which were compiled at the end of the program. But you would have to refer to the State Department's records or those of the Immigration and Naturalization Service.

Mr. EILBERG. Can you recall any instances where a U.S. Government agency interceded on behalf of any individuals who have been specifically barred from admission under section 14?

Mr. GERETY. None.

Mr. EILBERG. The point is we are very much interested in the number of persons refused admission under section 14.

Can you tell us again where we might go to find that?

Mr. RIEGER. As I said, the records of the State Department and Immigration and Naturalization Service. That program was unique in that there was a joint signature required for the issuance of each visa, one by the visa officer and one by the Immigration officer, and they jointly signed before a visa issued, and I think you would find the records in either or both of the organizations.

Mr. EILBERG. In another area, Mr. Gerety, I gather that one of your major problems in starting operations under this act was to get governments to agree to the issuance of guarantees of return certificates.

Can you explain to the subcommittee what a guarantee of return certificate was?

Mr. GERETY. I can't even remember the phrase.

I will have to ask Mr. Rieger to help me out on that.

Mr. RIEGER. We did have difficulty. But I can't recall now what the specifics were. It seems to me it had to do with the question of returning persons who were not deemed to be eligible to stay in

this country, whether we could get a guarantee from the countries that they would take them back.

This, of course, was a very difficult procedural arrangement. I cannot any longer comment on the specifics.

Mr. EILBERG. Do you recall, if there was a guarantee of return in every case, or only in particular cases?

In other words, when was a guarantee of return required? Was this for every applicant or only for some.

Mr. RIEGER. I can no longer comment on that. I can't recall.

Mr. EILBERG. It is my understanding that every person who arrived in the United States was required to have such a certificate in his permanent file with the INS.

Does that ring any bell with you?

Mr. RIEGER. It sounds like what was done at the time and, again, I can only refer you to the INS files to establish that.

Mr. EILBERG. Well, based upon your recollection there, can we conclude that INS at any time should have in the files of each individual a guarantee of return certificate?

Mr. RIEGER. Mr. Chairman, if it was a requirement that we have it in order to proceed, we must have gotten it and it must exist.

Mr. EILBERG. But you are just reasoning, you don't know from your own recollection at this point?

Mr. GERETY. I can say this, that I don't remember that as being any particular problem, whatever that requirement may have been. I just remember that as one of the problems we dealt with.

Mr. RIEGER. It was in the early stages.

Mr. GERETY. Maybe before I took over, that may have been part of the problem.

Mr. EILBERG. If they were required then and they do exist, they have particular significance as far as the work of this subcommittee on this subject.

Mr. GERETY. That's correct, and it should be with the INS admissions file.

Mr. EILBERG. They may provide a basis for expediting the so-called alleged Nazi war criminal cases.

Another question which I have to ask, in your estimation, if one could prove deliberate falsification or misstatements which led to the individual's entry into the United States, would the guarantee of return be operative?

Mr. GERETY. I just don't have any recollection about the guarantee of return, I am sorry.

Mr. RIEGER. My answer is, I presume so.

Mr. EILBERG. All right.

Do you have any further questions, Ms. Holtzman?

Ms. HOLTZMAN. Yes, Mr. Chairman.

Can you explain why no effort was made to obtain any information from Eastern European countries on the backgrounds of persons who were of Eastern European or Russian origin prior to granting them a visa to come to the United States to determine whether or not they had engaged in acts of persecution or atrocities?

Mr. GERETY. I have to defer to John. He knows more about that.

Mr. RIEGER. I think, Ms. Holtzman, the answer to that would probably be we would have the same difficulty at this time as you

would have today to ask any of the governments to give you information about.

[A further response to this question was subsequently provided by Mr. Gerety and appears in app. 5, p. 209.]

Ms. HOLTZMAN. Are you aware of any difficulties we are having today?

Mr. RIEGER. I didn't hear the question.

Ms. HOLTZMAN. I said, are you aware of any difficulties we are having today with respect to requests for information from Eastern European countries or the Soviet Union on war crimes?

Mr. RIEGER. Of course not. It's just an assumption on my part that you would have difficulty in getting it.

Ms. HOLTZMAN. I see, but I am not asking you about today, I am asking you about why at that time, when you were a high official in the administration of this program, no requests for information were made.

Did you want to find out whether or not these people engaged in atrocities or war crimes in Eastern Europe or in the Soviet Union?

Mr. RIEGER. We did everything we could in the circumstances prevailing at the time.

Ms. HOLTZMAN. What were those circumstances? Was there an order prohibiting you from doing this? Was there a law prohibiting you from doing this? Was there a directive?

Mr. RIEGER. From making inquiry in Eastern European countries?

Ms. HOLTZMAN. Yes, or the Soviet Union with respect to atrocities committed at the direction of Nazis. There was no order, directive, statute, regulation, law, that you can recall?

Mr. RIEGER. No.

Ms. HOLTZMAN. Why wasn't it done, then?

Mr. GERETY. I can only say we accepted the standards that were in force when I came in that had been established by the ICIS, as I think they called it—that is, the Intergovernmental Committee for Internal Security—and we checked with what was available.

Now, we didn't have any jurisdiction in any country behind the Iron Curtain.

Ms. HOLTZMAN. By statute?

Mr. GERETY. We were not there. I know we didn't, at least I feel we didn't, and I can't comment further.

Ms. HOLTZMAN. I would just say that considering that a number of requests that have been made to countries such as Poland have produced important information with respect to proceedings against persons who came to this country in violation of the immigration laws, I think you would have to recognize that the failure to have sought information on these persons allowed our country to become a haven for persons who were guilty of war crimes and atrocities.

I think it was a serious defect in the administration of those laws. Certainly considering the number of atrocities that were committed in Eastern Europe, particularly against the Jews and others, it's regrettable that more of an effort was not made to obtain background information from Eastern European sources prior to admitting these people into the United States.

Mr. EILBERG. Thank you, Ms. Holtzman.

Mr. GERETY. I would like to say I share that sentiment; it is regrettable if any of them came in.

Mr. EILBERG. Mr. Gerety and Mr. Rieger, we thank you for your presence. We are sure that you testified honestly and it is just a pity that you don't have fresher recollections and better knowledge of where records are and so forth.

You know what we are engaged in and we are trying to explore thoroughly the whole matter. These hearings will continue until we have substantially more knowledge than we presently have.

We thank you very much for your attendance.

Thank you.

Mr. GERETY. Thank you.

Mr. EILBERG. The Chair would like to announce that we will take one more witness, since it deals with the same general area with which this testimony has just dealt. It will be necessary to take a brief recess of 15 minutes during which I ask that everyone kindly leave the room.

Thank you.

[A brief recess was taken.]

Mr. EILBERG. The subcommittee will come to order.

Our final witness for today will be Mr. Almanza Tripp.

Mr. Tripp is a former Immigration and Naturalization Service official who was stationed in Europe and who worked with the Displaced Persons Act.

Mr. Tripp, we welcome you and we would like to swear you in.

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TRIPP. I do.

Mr. EILBERG. Mr. Tripp, I am sure you have observed our style this morning.

If you have a statement we will be glad to hear from you.

TESTIMONY OF MR. ALMANZA TRIPP, FORMER IMMIGRATION AND NATURALIZATION SERVICE OFFICER STATIONED IN EUROPE WITH THE DISPLACED PERSONS ACT

Mr. TRIPP. I prepared no statement because it is too complex a matter to put in a small memorandum.

Mr. EILBERG. All right.

Would you wish to comment on any of the statements you heard this morning?

Mr. TRIPP. No. I presume that you are mostly interested in the testimony that I can give regarding the displaced persons program.

Mr. EILBERG. That is correct, sir.

Mr. TRIPP. And there has been no discussion of that that I have heard.

Mr. EILBERG. All right; then, we will ask you a few questions, if you don't mind.

Mr. Tripp, you were in charge of the INS contingent stationed in Europe during the implementation of the Displaced Persons Act. [For text of Displaced Persons Act, see app. 1, p. 161.]

Previous congressional testimony indicates that you had a number of conflicts with Displaced Persons Commission officials in Europe.

Do you remember those conflicts?

Mr. TRIPP. Oh, yes.

Mr. EILBERG. Can you give us a summary of the cause of those conflicts? Can you tell us about them?

Mr. TRIPP. Perhaps it boils down to the philosophy of two groups that we had in the program, those interested mostly in the quantity of the DP's—displaced persons—they would bring to the United States, and those who were more interested in the quality of the DP's.

I happen to be one of those interested in the quality. The other groups, like the voluntary agencies, naturally, having their charter passed on religion in many instances, were anxious to help people and without too much consideration about the type of person they were helping.

We also found that the international organizations, IRO in particular, was anxious to move as many people as they could.

Mr. EILBERG. What was the name of that organization again?

Mr. TRIPP. International Refugee Organization, IRO it was known as. The Displaced Persons Commission was anxious to make a good showing, because the program was one that was very favorably looked upon by the administration at the time. As a result of the desire to bring in as large a number as possible in a short period of time, I am afraid that some of those agencies cut corners a bit.

Perhaps the most important one to you people now in the matter you are considering was the failure to wait for a return from the Berlin document center check before processing the application of the displaced person.

Mr. EILBERG. Can I interrupt you at that point by noting, that Mr. Gerety, who preceded you on the witness stand, testified that checks were made with the Berlin documentation center.

Mr. TRIPP. He was speaking of the refugee relief program. I am speaking of the displaced persons program.

Mr. EILBERG. All right.

Mr. TRIPP. The request for information was sent to the Berlin document center.

I might also add one was sent to the provost marshal's office with a fingerprint chart. But in an effort to move as many in as short a period of time as possible, the cases, the applications, were processed before a return came back.

Mr. EILBERG. How quickly were these people moved? I mean what kind of delay would be involved if one waited for those returns?

Mr. TRIPP. I testified before the Senate subcommittee in 1950, February, I checked my testimony before I came down here, and at that time I said that if we stopped everything until we got those checks through it would be about a 3-week breakdown in the program. That is what I said at that time.

Mr. EILBERG. I see.

Mr. TRIPP. I remember some of the things that happened over there in this program very vividly, but some of them I don't remember so well.

Mr. EILBERG. But do you still feel that the 3-week period was worthwhile and should have been adhered to?

Mr. TRIPP. I think it should have, yes. In checking the record of the 1950 hearing, I find that that was in February 1950, and at that time about 135,000 entered under the act, and the coordinator of the Displaced Persons Commission in Europe testified at that time that some 70 cases of that number had been processed before adverse information was received.

They were in the United States when the adverse information was received from the Berlin document center. That was with the first 135,000.

Now, I don't remember whether that condition was corrected or not. I am hazy on whether it was changed.

I might also say that the then Commissioner of Immigration, Mr. Miller, testified that between 250 and 300 persons entered before adverse information was received from the Berlin document center or the Provost Marshal's office.

Mr. EILBERG. During what period of time was that?

Mr. TRIPP. His testimony was given in February 1950, and the program didn't really get underway until, oh, the late spring of 1949. So it was during that period that most of them came in.

We did, in my organization, stop some people whom we found out through examination, not through the Berlin document center, had been members of a German military unit. We stopped them and put them through our procedure we followed at that time on the theory that they had participated in a movement hostile to the United States and by serving in an element of the German Army.

We had a very good case that we used for a pilot case that I recall, a Latvian who took considerable pride in the fact that he not only had been accepted into their Waffen SS, as they called it, but he had been successful in acquiring the status of a commissioned officer.

On appeal to the Board of Immigration Appeals, that man was ordered admitted, and thereafter most of those who served in the military service and on whom we had no other information would be admitted.

That included not only the Waffen SS but there were a number of other units, the Ukraine Brigades, Vlasov's Army, Ilinka Guard. One of the late ones we never did get to was the Prince Eugen Brigade.

Mr. EILBERG. Do I understand that persons who were members of these organizations were permitted to enter this country?

Mr. TRIPP. These are all persons who served, speaking about persons who served in one of these units. Unless we had other information to keep them out. I testified into part of this before the Senate committee and, apparently, it was a congressional desire they not be kept out because in the 1950 amendment to the Displaced Persons Act the language was such that it did not specifically direct that they be excluded.

Section 13 was extended at some length, and I don't remember the wording of it now. You probably have it, but the part about military service was rather vague.

I think it said something about whether they served the voluntary or not and, anyway, it tied our hands as far as stopping them for military service only.

-Mr. EILBERG. All right, Mr. Tripp.

We will have to recess for a few minutes to go over and vote. There is a vote going on the floor of the House, and we will be right back.

The subcommittee stands in recess.

[A short recess was taken.]

Mr. EILBERG. The subcommittee will come to order.

Mr. Tripp, we were exploring conflicts of opinion that you were having with members of the Displaced Persons Commission or officials thereof with respect to the quality issue you described, quality versus quantity.

Mr. TRIPP. That's right.

Mr. EILBERG. Was there any resolution of that dispute?

Mr. TRIPP. Well, yes; in a sense. I have to enlarge a little bit on it.

We took the stand that if an applicant for entry under the DP Act was ineligible for that status, he then fell under the general immigration law, and we had jurisdiction to exclude him.

The Displaced Persons Commission took exception to that and insisted that once they had made a finding of eligibility we were bound by it. That was one of the main controversies, and that was, you might say, decided in the working of both the minority and majority reports on the Refugee Relief Act in 1953 wherein they adopted the reasoning that we had put forth at the hearings in 1950, and even went so far as to say that the act should not be regarded as a mandate to bring x number of people into the United States; it only made x number of people eligible.

And they went further, to insist that no visa could even be issued under the Refugee Relief Act until the applicant had been approved for visa issuance by an Immigration officer, which, in a sense, endorsed our stand in the DP program, if you follow me.

Mr. EILBERG. Yes.

Mr. TRIPP. There is one thing I would like to enlarge on: This service in military organizations.

In my testimony to the Senate committee in 1950, I expressed concern that our service would be subject to criticism for admitting these people unless it was passed at higher level. It was interesting—and if you want to look it up you will find it on page 688 of the Senate record—when they amended section 13, in the language they did it, it led me to believe that the Senate did not want us, or the Congress did not want us, to exclude for military service alone. That does not preclude the denial of entry if there are other factors connected with the service; and, of course, whenever we found an applicant had been a member of some German military unit, we questioned him quite thoroughly, to try to determine if there had been anything such as persecution; but it is very difficult—

Mr. EILBERG. Any what?

Mr. TRIPP. Such as persecution, but it is very difficult to prove; and then there are other angles to the Berlin document center records. That includes the names of people who were not necessarily military service but may have been naturalized Germans during the war.

It also includes a large number of people who apparently were not thought of too highly by the Nazi Germans as collaborators, and they were put into farm work or factory work, and they are

listed in the Berlin Document Center as members of the general government. That is the term they used.

Mr. EILBERG. As you said, the law was changed in 1950, eliminating membership as an ineligibility standard?

Mr. TRIPP. It doesn't say so in so many words, but the wording is such that we couldn't exclude on those grounds; and I might say that the Board of Immigration Appeals admitted a man on appeal, acting for the Attorney General, of course, and the final report of the Displaced Persons Commission makes reference to the fact that the commission approved the entry of members of the Waffen SS in a decision, I think, of September 1950.

Mr. EILBERG. You said earlier that even though members of German military units or parties or factions were not excluded after 1950, nevertheless, individuals who were accused of Nazi war atrocities were?

Mr. TRIPP. If we found them, if we had information, we would exclude them.

Mr. EILBERG. What machinery did you have, or apparatus or investigative staff, to assist you in that regard?

Mr. TRIPP. We were limited to the file that came forward from the Displaced Persons Commission. That file contained the report of their finding of eligibility; it included the report of the CIC, of the field investigation, including a check of about seven different sources of information.

In areas outside of the American zone, they had their own investigators—the DP Commission did.

Mr. EILBERG. Was there, to your recollection, any check? For example, if someone were a member of a Nazi military unit, would there have automatically been an investigation as to whether he was involved in atrocities or not?

Mr. TRIPP. We would make a thorough interrogation, but I am afraid it wasn't done before it came to us, because that membership was also a reason for denying eligibility with the International Refugee Organization and it was, I thought, a reason for denying approval under the Displaced Persons Act.

Now it could very well be that they rejected many that I never knew about.

Mr. EILBERG. Did you have any staff or assistance to assist you in checking to see that the particular individual had not committed atrocities?

Mr. TRIPP. During the last year, perhaps a year and a half, of the program, I had a small investigative unit of about four men that I used mostly on investigations that were of a technical nature under the immigration law, like various types of crimes, to find out whether it was one that would be a bar to admission, things that we couldn't rely too much on CIC to do because they weren't familiar with our statute.

Mr. EILBERG. Do you remember how many either before 1950 or after 1950 were excluded because they were Nazi war criminals that had committed atrocities?

Mr. TRIPP. Well, now, what we did in those cases, that went more to eligibility than admission under the immigration laws, and we had, oh, hundreds of cases that came forward to us that we questioned their eligibility, and we would refer them back to the Dis-

placed Persons Commission or to the International Refugee Organization for review and a redetermination of eligibility.

There were so many at one time that the Displaced Persons Commission transferred one of their senior officers to Bremen, where we were located at that time, to review those cases; and, later on, when we had trouble with the International Refugee Organization regarding their eligibility, they sent an eligibility officer to Bremen.

It wasn't altogether satisfactory because both of those officers would review the file and then come to me with the file and tell me verbally, "It's all right. You can go ahead." And then when they would say do that, why, I would insist on a written letter stating that they had reviewed it and still found them eligible; in that way cut off about half of them.

Mr. EILBERG. Do you recall how many were excluded for having committed atrocities?

Mr. TRIPP. I don't know. I wouldn't know that, because I say, those should have been caught before they ever got to the immigration examination and, no doubt, an examination of the Displaced Persons Commission's final report would give a better figure on that than anything I could give, because they would be the ones who should have caught it.

Unfortunately, when I first went to Europe I found that the applicant was seldom, if ever, interrogated by an American official until he got to the Immigration Service. His examination before that was all done on the basis of documents or information he had given to the International Refugee Organization, and it bothered me so much that I reported it to my central office, and that's what led to some of this controversy you refer to.

Mr. EILBERG. Mr. Tripp, as a ranking INS official in Europe, you had contact with all U.S. governmental agencies involved in this problem—the State Department, CIA, CIC. Did you ever specifically discuss this problem of the admission of persons who had committed atrocities with our governmental agencies?

Mr. TRIPP. Oh, yes; yes.

Mr. EILBERG. What would you say, and what would they say?

Mr. TRIPP. Well, the main thrust of my discussion with these agencies—I went to their meetings when they held zone-wide or European-wide meetings, and the main thrust of my talk would be, "Please, don't process the case if you are in doubt and send them up to Bremen where we will have to stop them. It is far better to tell them no, back in the resettlement area, in the camp area, than to put them through to Bremen."

Unfortunately, none of the people involved would buy that. In fact, the Displaced Persons Commission refused to deny processing to someone who was apparently inadmissible under immigration law because of criminal conviction. They took a stand—and it could be defended—that that was a job for an Immigration officer to decide; but I explained to them that we had men available; I would gladly make them available for advisory opinion; but they insisted on going through with it.

Mr. EILBERG. My question, or the point I am trying to make, is, did you bring up with our own agencies—State Department, CIA, CIC, and any others—the question of Nazi war criminals?

Mr. TRIPP. Oh, we discussed it, along with other matters, but it wasn't discussed at any great length because we all accepted the fact that we were going to keep them out if we could catch them; but the problem was in catching them.

Mr. EILBERG. But you were limited in catching them because the Commission put pressure upon you to get the people moving before the checks came back?

Mr. TRIPP. Oh, it did impede our action a little bit, yes, sir.

Mr. EILBERG. And from the position of your own office, you hardly had the resources to check on anybody; you said only at the end did you have this small staff; and all you could do was question.

Mr. TRIPP. Most of it had to be done by interrogation. —

Mr. EILBERG. That is certainly not the only way or necessarily the most thorough way in any case?

Mr. TRIPP. Not the best, because, unfortunately, many of the people who were members of these organizations—I am speaking of military organizations—were better educated than some of the others, and more difficult to pin down.

Mr. EILBERG. During your duty in Europe, did any of the agencies—CIA, State, CIC—approach you on the basis of national interest to make you grant admission to any persons in this category whom you may have considered ineligible?

Mr. TRIPP. I think we had a couple of CIA cases under the special allowance they have. You are familiar with it, I am sure.

Mr. EILBERG. They asked you to admit a couple. Do you recall those instances?

Mr. TRIPP. Yes; but that's provided for by law.

Mr. EILBERG. Do you recall anything more than that, as to the numbers, over the period of time that you were there?

Mr. TRIPP. That the CIA had the people?

Mr. EILBERG. Yes.

Mr. TRIPP. I don't believe there was over a handful because the people had more value to them in Europe than they had over here.

Mr. EILBERG. Now we touched on this a moment ago, but I think we both can agree that number—perhaps a large number—of persons who were possibly Nazi war criminals got through the screening process. Your explanation, I take it, is that the only mechanism you had was to interrogate them, and that some of them, being pretty smart and educated, were able to fool you, in effect?

Mr. TRIPP. No; sometimes we did get Berlin Documents, had a check which would show the military service or general government or nationalization in Germany, and we would have that to support our interrogation.

If I might digress just a moment, to give an illustration, we had a group of Mennonites who were brought from Russia to Germany during the war years and they were given land to work and were nationalized. Many of them, now, they weren't violent people. I don't think they ever persecuted anybody, not that group, but there we had some information to go on at the start that they were nationalized and in those cases they were referred back to the International Refugee Organization because they were patently not eligible, not a concern of IRO, under their constitution.

Mr. EILBERG. Over what period of time were you the administrator in Europe?

Mr. TRIPP. I went there February 1, 1949; I left February 1 of 1952.

Mr. EILBERG. You have no recollection as to the numbers that were denied admission to the United States because of Nazi-related activity?

Mr. TRIPP. No. I wouldn't know, and I think your best source for that information would be the Displaced Persons Commission, because they were the ones that had the first bite out of the apple; they could cull them out there.

Mr. EILBERG. Mr. Tripp, and I think you have referred to this, did you ever uncover derogatory, Nazi-related information after the displaced person had departed; and if so, what did you do in those cases?

Mr. TRIPP. When the check came in, the report came in, the Displaced Persons Commission relayed it to our central office in Washington and proceedings were started there. If you want a breakdown on it, I haven't got it here; but I checked the testimony of Commissioner Watson Miller at the time, and it appears on pages 901 to 910 of the Senate hearings; and he gives a list of the 250 or 300 who were already arrived here. Those were not all Nazi cases; some of them were criminal cases, and they got it from the Provost Marshal's report. He gives a lengthy report on how many of them died, how many left and how many were put in the proceedings.

Mr. EILBERG. This appears in your testimony before the Senate committee in February 1950. Is that correct?

Mr. TRIPP. Yes, February 1, 1950.

Mr. EILBERG. Do you have any idea what happened to these people after they got here, when you picked up this information and got in touch with your central office?

Mr. TRIPP. Well, as I say, Commissioner Watson Miller's testimony lists that and he gives what happened to them.

Mr. EILBERG. You don't recall? You don't recall what happened?

Mr. TRIPP. I don't recall. He gave a whole list of the 250 or 300.

Mr. EILBERG. Can you say that the United States returned any of these people?

Mr. TRIPP. I don't think they had much luck in returning them. They may have returned a few to Germany, some of them under proceedings, some on their own, some of them died. I don't know what the breakdown would be.

Mr. EILBERG. Mr. Tripp, as a long-time, faithful, competent, efficient official of the INS, how would you characterize the inaction by INS in the period between 1950 and 1973 in investigating and prosecuting alleged Nazi war criminals in the United States?

Mr. TRIPP. Well, I held a position, after I returned from Europe, where I was somewhat familiar with the operation. In fact, I retired from the position of Deputy District Director of New York, and I wouldn't say that that was too much of a problem. We didn't have too many good cases to work on, that I knew, ever. In fact, I only can recall one, and that didn't come to me in an official way. It came to me from the attorney who represented him, the alien in that particular case, and he had worked for me when I was at the

Boarding Division in New York, and he was a very high-principled man. He had gotten himself into trouble with some of his friends taking this case when it was an alleged Nazi and he was of the Jewish race, and his name, by the way, if you are interested, is Elmer Freid. He was a very high-principled young man.

Mr. EILBERG. Mr. Tripp, ever since I was a boy, over the years, even as a layman, I have been aware of the existence of alleged Nazi war criminals in the United States. Surely, the Immigration Service knew that also, and what I am really saying is, why wasn't something done about it during that period?

Mr. TRIPP. Well, you don't have the personnel to go out and start blind, looking for Nazi war criminals, but you do have hundreds of thousands of files involving people who must be investigated for some reason, and during the years—I retired at the end of 1956—but during the years I was there the emphasis was more on Communist Party membership than it was on Nazi affiliation.

Mr. EILBERG. Who directed that?

Mr. TRIPP. I don't think anybody directed it. It just grew up, you might say.

Mr. EILBERG. I understand you were involved in the original stages of the Refugee Relief Act program but that you subsequently were removed from any connection with this program; is that right?

Mr. TRIPP. That's right.

Mr. EILBERG. Can you explain the circumstances of your original involvement and subsequent removal?

Mr. TRIPP. Well, the administration—that was during the Eisenhower administration—was considering the advisability of more refugee legislation and Mr. Rabb, who was at that time a presidential assistant, ramrodded an unofficial committee where we discussed what kind of legislation would be best if enacted; and I was a part-time member of that, contributed some to it; and it was enacted, and I was, because of my experience in the DP operation, directed to do the preliminary work, get the personnel, plan the operation when it started in Europe.

I canvassed the Service for men I thought satisfactory and tried to indoctrinate them on what to expect in the program, drawing on my previous experience, and at that time I took very seriously the reports of the Congress when they reported the bill to the House in which they indicated they wanted a tough stand taken on it; and on October 12, 1953, the then Commissioner, Mr. Mackey, called me in, told me that the Attorney General had sent word I was to be removed from the program, which was all right. After all, I didn't suffer. He gave me other duties.

But there had been some complaint made and they wanted me out, I guess.

Mr. EILBERG. Do you know why? Do you have any notion as to why you were removed?

Mr. TRIPP. Let me tell you, I would rather not.

Mr. EILBERG. If it is helpful to us—

Mr. TRIPP. I will tell you, if you want to know. It might be embarrassing.

Mr. EILBERG. Does it tend to defame anybody in the Service, Immigration Service?

Mr. TRIPP. Not in the Service, no.

Mr. EILBERG. Why don't you tell us?

Mr. TRIPP. Well, it was reported to me that a man named Arthur Greenleigh, who was at that time the director of the United Service for New Americans in New York, asked for a meeting with the heads of the other three big agencies—Catholics, Lutherans, Church World Service—with the view of having me removed from the program because I had been a stumbling block in the DP program. They held discussions, that were reported to me, for 1 day, and took a recess at night, without reaching a decision. The next day, Mr. Greenleigh told one of them, Mr. Elliott, that there was no need for any further discussions, they had arranged for my removal; and I was removed; that's all.

Mr. EILBERG. But your position is that in holding back some of these people you were only carrying out your responsibilities?

Mr. TRIPP. Well, they had other duties they could assign me to, and they did.

Mr. EILBERG. But during the period that you were on the displaced persons job, you were only asking that we wait until these checks came through?

Mr. TRIPP. I tried to do the job as I thought it should have been done, and I was investigated several times, both by the predecessor of this committee, the Walter committee—they investigated me in Europe twice, the Senate committee did, twice, and I think there were five or six investigations by the Service; and somehow I weathered the storm, so I must have been doing something right.

Mr. EILBERG. Ms. Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

I am sorry I missed some of the testimony you have given, but as I understand it, the Displaced Persons Commission did the screening to determine whether or not people engaged in atrocities or war crimes—

Mr. TRIPP. Oh, no; I didn't say that. I said they made the finding of eligibility and they based that on the file they received from the International Refugee Organization, plus the report of investigation conducted by CIC.

Now if the CIC investigative report contained—it was a mimeographed form—and it contained a statement that there was no evidence to indicate that the applicant had engaged in any movement hostile to the United States—they don't say definitely whether there is no evidence of it—and on the basis of that the DP Commission would find that there was no reason to deny under section 13 of the DP act.

However, the CIC also sent for these checks, including the Berlin Document Center, and the provost marshal's office, and the DP Commission would process the case for visa issuance and immigration examination before the reports came in from those requests for checks.

Ms. HOLTZMAN. Let me just clarify a few things: The CIC report would say that these people engaged in no movement hostile to the United States?

Mr. TRIPP. Yes. The original section 13 was a very short section and it stated that no one should be found eligible, I believe, or no

visa should issue to any person who engaged in any movement hostile to the United States.

That was the basis for our finding that military service was a movement hostile to the United States.

Ms. HOLTZMAN. What about persons who engaged in war crimes or persons who engaged in atrocities, say, concentration camp guards, what section would they be processed under?

Mr. TRIPP. They would be under the "hostile to the United States," under the amended section 13, why, it was spelled out and it was also spelled out in the Refugee Relief Act. They put the wording in "persecution for race, religion or national origin," but in the original section 13 they didn't have that.

Ms. HOLTZMAN. Do you know as a matter of fact whether or not in determining whether a person was engaged in a movement hostile to the United States, the CIC reviewed activities such as the commission of atrocities?

Mr. TRIPP. Do I know any?

Ms. HOLTZMAN. You said that the CIC made a determination with regard to whether or not a person was involved in a movement hostile to the United States?

Mr. TRIPP. Yes.

Ms. HOLTZMAN. I would like to know how you know that in making such a determination the CIC took into account the issue of whether this person had been engaged in atrocities or war crimes.

Mr. TRIPP. They didn't say that he never engaged in a movement hostile to the United States; but that there is no evidence that he had engaged in it. They were splitting hairs. The idea was the DP Commission was to slough off the responsibility for making that finding, so—

Ms. HOLTZMAN. Let's go back. Either I am not stating my question clearly or you are not answering. I am not interested in the issue of evidence or no evidence; I just want to know whether you know if the CIC looked at whether or not the person engaged in atrocities or war crimes in making this determination about not being engaged in a movement hostile to the United States—in other words, would the CIC take a look to determine whether or not this person was a concentration camp guard or official?

Mr. TRIPP. My undersanding is the CIC would send for the Berlin Document Center check, but they completed the investigation before that came in.

Ms. HOLTZMAN. The CIC would complete a check before they received the Berlin Document Center material?

Mr. TRIPP. Yes.

Ms. HOLTZMAN. And they would send a statement to the International Relief Organization that they had no evidence that a person was—

Mr. TRIPP. No, no. They sent their report to the Displaced Persons Commission.

Ms. HOLTZMAN. They sent a report to the Displaced Persons Commission saying they had no evidence a person was engaged in a movement hostile to the United States, even though they had not received information from the Berlin Document Center?

Mr. TRIPP. That is right; they had no evidence yet.

Ms. HOLTZMAN. Did they ever correct a report after they received the information from the Berlin Document Center?

Mr. TRIPP. Yes; as soon as they received it, they sent it to the Displaced Persons Commission, and these were the cases I referred to here earlier, of some 70 cases that were reported to our office in Washington after entry, because the Berlin Document Center check caught up with them, but that doesn't mean—that's not evidence that they persecuted.

The movement, that is, evidence that they were one of the groups that might be called Nazi collaborators, they served in the military unit, or they got naturalized, or they did something else where they were helpful to the Nazi government.

Ms. HOLTZMAN. Did the CIC make any inquiry of countries in Eastern Europe?

Mr. TRIPP. No, no.

Ms. HOLTZMAN. Or the Soviet Union?

Mr. TRIPP. No, they had no authority to do that. The CIC only did the field investigation in the American Zone of Germany and Austria.

Ms. HOLTZMAN. Did they ask for any information from the British Zone or the French Zone?

Mr. TRIPP. In the British Zone, the Displaced Persons Commission had their own investigators, I believe; and in the French Zone they worked in collaboration with the Surrete and the British Intelligence, but they had their own investigators.

Ms. HOLTZMAN. If somebody were seeking admission from the British Zone or the French Zone, there would not be a CIC report?

Mr. TRIPP. No, there wouldn't be one. They would be done by the Displaced Persons Commission. You see, the act required an agency to be named by the President to make the investigation and report, and by Executive order the Displaced Persons Commission received that designation. They didn't have the force to do it without hiring people, so they passed the job on to CIC in the American Zone.

Most of the DPs were in the American Zone, although there were large numbers of others; but most of them were in the American Zone, and that way they could keep the investigator force of the Displaced Persons Commission down.

Ms. HOLTZMAN. With regard to processing persons for admission who were Eastern European in origin or came from the Soviet Union or the Baltic States, did it concern you that you didn't have information from those countries about whether or not these people engaged in war crimes or in atrocities?

Mr. TRIPP. It concerned me that we didn't have—some of them—we didn't have a good background check on them.

Ms. HOLTZMAN. Did you express this concern to any of your superiors?

Mr. TRIPP. Oh, yes.

Ms. HOLTZMAN. What was their response?

Mr. TRIPP. Well, they held meetings here in Washington, mostly with the Displaced Persons Commission, and State, and they would come up with a plan, and they would relay it to all three agencies overseas. Sometimes they would adopt my recommendation and sometimes they wouldn't.

Ms. HOLTZMAN. Did you ever make a recommendation that information on people's background be obtained from countries in Eastern Europe or the Soviet Union?

Mr. TRIPP. No.

Ms. HOLTZMAN. Why not?

Mr. TRIPP. Because there was no way you could do it. You run into the State Department problems of jurisdiction and—well, one of the things is, if they allow—to put it simply—if they allowed American investigators to go into, we will say, into Poland, why, they might in turn demand the right to send Polish investigators into the United States.

These are all things that I don't know too much about; but the State Department has to watch those things all the time.

Ms. HOLTZMAN. Did you ever discuss with the State Department getting information from countries in Eastern Europe?

Mr. TRIPP. No; they would have to make official representations to the Polish Government before they could send investigators in. They would have to get permission.

Ms. HOLTZMAN. I am not even talking about investigators; I am talking about making requests for information.

Just treat it as though it were a Berlin document—

Mr. TRIPP. You would have to make it through the consulate; you couldn't make it direct.

Ms. HOLTZMAN. I know, but did you ever ask that such a request be transmitted to an Eastern European country or to the Soviet Union with respect to any person coming to the United States under the Displaced Persons Act, and if not, why not?

Mr. TRIPP. I asked once for some information from Poland, to be obtained through the consulate, and I didn't get any action; and I didn't know as much then as I knew later on. I didn't understand the State Department problem. So I dictated a letter to the keeper of the records in this particular community and asked for a record I wanted, and it came back, but I found out afterwards it could have been very embarrassing to the Department of State, so I didn't do it again.

Ms. HOLTZMAN. Was the record helpful in making your determination about admission of this person?

Mr. TRIPP. It was a birth record I was after; it came back right away. It would have been very embarrassing to the Department of State; it could have been.

Ms. HOLTZMAN. So the Department of State directed you never to do this again?

Mr. TRIPP. What is that?

Ms. HOLTZMAN. The Department of State directed you not to do this again?

Mr. TRIPP. They didn't ask that I do it; I didn't even tell them. I found out what their problem was after I had done it.

Ms. HOLTZMAN. What was their problem? They did not want to make requests of Eastern European countries or of the Soviet Union for information; is that what they said to you?

Mr. TRIPP. Let me put it this way: To take another situation where I got into trouble, almost got into trouble the same way, after I came back from Europe I went out to the Pacific, out to Guam, for a while, to do some work for Navy and Interior, on loan,

and I came back and we were writing up regulations that would take care of the people in the Trust Territory of the Pacific, and I wanted to set up a consulate in Saipan or one of the islands of that group, the Marianas, and the State Department representative explained it to me, that under the terms of the Trust Territory and general diplomatic practice, if they did that, the Russians could in turn, or some other agency, could in turn, demand the right to put a consulate in the Trust Territory area.

It's one of those things that the State Department understands, they have to weigh one thing against the other.

Ms. HOLTZMAN. I am not sure that anybody understands, what the State Department claims it does.

Thank you very much, Mr. Chairman.

Mr. EILBERG. Mr. Tripp, we thank you for being here today and for your candor, and it is nice to have a witness who doesn't withhold information. We do believe that you have attempted to be honest in every respect.

We thank you very much for coming to Washington and participating in these hearings.

This hearing is adjourned.

Mr. TRIPP. Thank you.

[Whereupon, at 1:45 p.m., the hearing was adjourned.]

ALLEGED NAZI WAR CRIMINALS

FRIDAY, JULY 21, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
CITIZENSHIP, AND INTERNATIONAL LAW OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2237, Rayburn House Office Building, Hon. Joshua Eilberg (chairman of the subcommittee) presiding.

Present: Representatives Eilberg and Hall.

Also present: Garner J. Cline and Arthur P. Endres, Jr., counsel; Raymond P. D'Uva, assistant counsel; Peter Regis, legislative assistant; Alexander B. Cook, associate counsel.

Mr. EILBERG. The subcommittee will begin its hearing.

We welcome Mr. Sam Zutty, former Chief Investigator of the New York Project Control office of the Immigration and Naturalization Service.

Before receiving your testimony, Mr. Zutty I would like to make a brief statement.

Today, the subcommittee holds its third day in this series of hearings on the subject of alleged Nazi war criminals.

The testimony which we have received thus far has, in some cases, been quite forthcoming and will be helpful to this subcommittee's investigation into this matter.

On the other hand, other witnesses seemed to be somewhat less than candid in their testimony and in answering the subcommittee's questions.

Today, we will hear from two former INS employees who were closely involved in alleged Nazi war criminal cases, Mr. Sam Zutty, who headed the INS Project Control Office, established in New York City in 1973, and Mr. Vincent Schiano, former INS chief trial attorney, a well-known attorney who has worked extensively in this area.

We also will be hearing from Mr. Mario de Capua, presently a Foreign Service officer on duty in Washington, who prior to his joining the State Department was Chief of Security and Investigations of the Displaced Persons Commission from 1948 until 1952.

Again, I would state that it is my hope that these witnesses be completely candid in the giving of their testimony here today, as well as responsive to questions put to them by Members of the subcommittee.

I would also again remind the witnesses that pursuant to House rules they refrain from the use of specific case names in discussing these cases.

Mr. Zutty, would you rise, please?

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ZUTTY. I do.

TESTIMONY OF MR. SAM ZUTTY, FORMER OFFICER IN CHARGE OF PROJECT CONTROL UNIT, NEW YORK DISTRICT OFFICE, IMMIGRATION AND NATURALIZATION SERVICE

Mr. EILBERG. Do you have a prepared statement you wish to submit?

Mr. ZUTTY. I do not.

Mr. EILBERG. All right.

I think you are familiar with what we are trying to do here, and perhaps you would like to make a few general remarks before we ask questions.

Mr. ZUTTY. All right.

With the extradition by the West German Government of Mrs. Ryan, the Immigration Service set up a project control unit in New York to complete the investigation of alleged Nazi war criminals. With the publicity that was caused by the extradition of Mrs. Ryan, the Service felt it should have a centralized organization to handle all allegations and all cases involving reports of Nazi war criminals in the United States.

With that in mind they set up this group in New York. I was allowed to choose whoever I wanted to help me. I was given a mandate by the Service. I specifically asked for as to the extent of my authority? What I was supposed to be looking for and what drawbacks, if any, I should be concerned with.

I was given assurance by the highest authorities in the Service to spare no expenses, no efforts, to bring once and for all the investigation of Nazi war criminals in the United States to a head.

With this in mind, for the next 4 years I devoted my full time and energy to this project. In July 1973, when the project started prior to my mandatory retirement in December of this past year, 1977, that was my function.

And with that in mind I feel that of all of the witnesses that you have had before you, I think I have a far greater background into the individual cases and what happened.

It is quite true I know nothing of what happened as far as the investigations prior to 1973, but, by reading the files and discussions and seeing the complete pictures that unfolded, I am fairly well knowledgeable as to what happened prior to and, of course, subsequent, as I was there and conducted the complete investigation, the interviews. I went to Israel on behalf of the Government, spoke to Israeli officials, and feel quite competent to answer any questions which the committee cares to pose.

Mr. EILBERG. Thank you very much, Mr. Zutty.

As you know, this subcommittee has been working with this project since before your project office was formed. As a matter of

fact, I think it was formed in part, as a result of our searching inquiries.

What manpower was assigned to your office?

Mr. ZUTTY. Prior to DeVito's retirement, he had one case, the Ryan case. Then he was assigned one other case, it was during this period of time he felt it necessary to resign for whatever reasons he had in mind.

At this time there was a list of some 70 names which DeVito had been given by Dr. Oscar Karbach of the World Jewish Congress and, with this as our nucleus, these 70 cases were then given to me to start the project involving the investigation of Nazi war criminals. I requested two men to initially help me, which was approved and with that we started our project.

Mr. EILBERG. What limitations, if any, were imposed upon you by the central office?

Mr. ZUTTY. On the contrary, there were no limitations. The only limitations were the standard investigative techniques that we all use. I had been an investigator, of course, prior to this project for over 20 years, so I knew the process.

I asked for a written statement from higher authorities as to what extent I should conduct the investigations. Should, for example, age be a criterion, because some of these people were over 80 years old, and the answer came back from higher authorities that the age, the physical condition, the background of any individual should not be a deterrent to their investigation.

In other words, I was to conduct the investigation and find any available evidence to determine whether we had sufficient grounds to proceed against them or not. That was my mandate.

Mr. EILBERG. Were you and your staff working full time on Nazi investigations?

Mr. ZUTTY. Yes. I did this solely. There was no other duties.

Mr. EILBERG. You had no other outside employment activities during this time?

Mr. ZUTTY. None at all.

Mr. EILBERG. Can you tell us how many hours of overtime you worked when you were associated with the Project Control Office?

Mr. ZUTTY. The normal hours were 40 hours a week, plus overtime. I would say roughly in the vicinity of 48 to 50 hours a week, plus on certain occasions we even worked longer.

Mr. EILBERG. Did the New York District Director or the central office prevent you in any way from working overtime on the Nazi project?

Mr. ZUTTY. No, on the contrary. I was given assurance at various times even as far as the Commissioner himself, who said that at any time if we needed more personnel, more individuals to help, to not hesitate and ask for them.

Mr. EILBERG. Can you describe the condition of the Nazi war criminal files that you took over?

Mr. ZUTTY. Yes; I would like to do that. In any normal case, the first thing we do is to obtain the relating file, which we, of course, did in each and every case. I might comment, if I might get off the subject, I have heard for 4 years allegations and innuendos of missing files, and taking stuff out of the files and various things like this. Now to my knowledge, and I can only speak from what I

saw, the one case in which a "cause celebre" was made, about missing files and that was in Detroit, I would like to present to the committee my interpretation of what happened and to my knowledge the thrust of this.

Mr. EILBERG. Go ahead.

Mr. ZUTTY. I am not writing books, I am not involved with any other ulterior motives; I just want to tell you exactly what happened, and I won't mention the name because this individual is now under proceedings.

This individual arrived in the United States, I think in 1949 or 1959, or thereabouts. On his visa he was destined to Detroit. Now, normal procedure is that a file goes to the place where the individual was destined, therefore, the file of this individual was sent to Detroit, as normally is done.

When investigation was commenced on this individual in 1966 by the Immigration Service, long before the project was set up or long before the committee was even aware of the Nazi war criminal problem, there was an investigation conducted by an investigator in New York, who had sent for the file and conducted a full and comprehensive investigation on this individual.

I might add there were also statements and innuendos that I heard for 4 years of material being taken out of that file, and there were documents, ordering the case to be closed. Now, as far as what I have been able to see by looking at the file and discussing it with everybody involved, including the investigator who handled the case, there was an investigation commenced in 1966 by the Immigration Service concerning this individual.

There were about 60 some odd witnesses interviewed as a result of this investigation, and in every case with negative results. No one could identify this individual as having been involved in committing atrocities.

Now, for whatever reason, there was a memorandum sent up by the central office signed by Wilbur Flagg which, he stated, there were only five more additional individuals to be interviewed out West someplace.

For whatever reason, they decided we have interviewed 60 witnesses with negative results, let's not keep knocking our heads against a wooden wall and, keep interviewing witnesses so therefore, they just ceased the investigation.

I do not believe there was any ulterior motive or conspiracy or anything else involved why the case was closed, but you have to look at these things in the context of time. You cannot look at something today and what happened 10 years ago and try to correlate it. It's different.

Ten years ago, 15 years ago, when the problem of Nazi war criminals came up, it was a different set of circumstances.

I might point out to the committee, which I feel to be important, up until the time I left we had allegations of close to 200 cases. Not all of them strong allegations, I want you to be aware of. They were just allegations, a man who had a crew cut haircut and walked a police dog, was alleged to be a Nazi war criminal. Of the 200 allegations, I would say about 100 were legitimate allegations with some substance.

Only two cases to my knowledge of these 200 cases involved Germans or of German ethnic background. The 99 per percent were Ukraine, Estonians, Latvians, Lithuanians, and so forth. I heard yesterday at the hearings a question, I might clear up for the committee. How these people came into the United States?

Now, if you like, I can expound on that because I have done a lot of research into it and spoken to many various sources.

Mr. EILBERG. Go ahead.

Mr. ZUTTY. The Germans involved in the genocide of the Jews and other nationalities were very clever. They did not do the dirty work themselves; they used the Lithuanians, the Estonians, the Ukrainians and so forth as their means of doing the killing and massacring.

For example, all of the guards at the concentration camps basically there might have been six or eight Germans in the whole camp, they were the commanding officers and so forth, but the guards who did the killing, those who shoved them into the gas chambers and who did the bestial driving them off the trains and so forth, they were the Ukrainians and White Russians and Lithuanians, et cetera.

Of course, in all the little towns, the militia were the ones that went out and did the killing, the local militia would just take off on their own and for whatever reason round up the Jews, take them off into the woods and shoot them. This was the type of collaboration that the Germans liked, and perhaps used to its full extent.

As a matter of fact, it was a standard procedure in these various towns to put a sign out over the town when the Germans were coming in, "Juden Frat"; "Jew Free"; it means they have killed all of the Jews in the area, so that the Germans would treat them with respect and consideration.

Going further on into the War, with the Russian advances, these collaborationists, the camps guards, and the militia who had done the exterminations, fled along with the Germans because they knew if the Russians got them or their own compatriots got them they would be executed out of hand, so they fled with the Germans. They came into the various DP camps eventually, threw their papers away, and said "I am a refugee from Estonia," "I am a refugee from Lithuania." There were no records, there were no means of checking on them because all of the records were behind the Iron Curtain.

Some issue had been made how come the United States didn't investigate more fully these people. Well, obviously the DP Commission, the Refugee Relief Act individuals were limited by their resources. As to the Germans, obviously, we had all of their records, we captured them, we set up the Berlin document center with these records so there were no Germans sneaking in because we had their records.

What we were, unfortunately, unable to do is check the background of the non-German people who were in the DP camps. And that is the reason we have, as I pointed out, this vast majority of non-Germans as part of the Nazi war criminals project. It's sort of misleading, because everybody thinks they are Nazi, and they are not Nazis. But collaborationists.

Mr. EILBERG. Mr. Zutty, getting back to the files for a moment, what was the condition of the Nazi war criminal files when you took over?

Mr. ZUTTY. Well, when we got them they were in a standard shape, as any other immigration file. Some of them were very, very thin and contained nothing in them but their visas. Others were voluminous, they contained results of previous investigations conducted by the Immigration Service, and some where there were allegations of Nazi war crimes in them, but no indication of any investigations conducted.

Mr. EILBERG. Bearing in mind the absence of modern methods of indexing or computerization, how can you know that papers were not removed from any particular file?

Mr. ZUTTY. Obviously, Mr. Eilberg, it is impossible to prove anything negatively. But the only one who could say something was missing positively was someone who took it himself and, as far as the statements previously heard here of material removed from files, obviously he cannot prove something negatively. But the only thing I can say in all my years there, and I have been there 30-odd years, and 4 years just on the Nazi war criminals project, I have never seen anybody deliberately remove any documents from files, or had any indications of this sort.

Mr. EILBERG. In the examination of these files were you in a position to determine how each of these cases was handled prior to your having assumed responsibility for them?

Mr. ZUTTY. Yes. In looking through a file it was easily determined whether there had been any previous investigation. If there had been a previous allegation, that was indicated in the file itself. As I might point out, back in 1966, Mr. Allen, who had been a previous witness here, did send a list of some 17 names to the then Attorney General Robert Kennedy alleging that these 17 individuals were involved in committing atrocities.

These letters and the material were in the files and, as I pointed out, I have never seen any evidence of, shall we say, misuse or taking out of any material from the files.

Mr. EILBERG. In the examination of these files, were you in a position to determine how each of these cases was handled prior to your having assumed responsibility for them?

Mr. ZUTTY. Yes. As I pointed out, Mr. Chairman, in the file itself was a record of the history of the individual from the day he came to the United States, including his visa, to the present. Now, if there had been a previous investigation conducted as a result of an allegation, the reports of investigation and relating materials were in the files, statements, and so forth, so it was easily determined whether there had been previous investigations conducted.

Mr. EILBERG. Were any of the alleged war criminal case files taken over by you previously closed then reopened and reinvestigated?

Mr. ZUTTY. Yes. Up until the advent of our project, I do not believe that the Immigration Service was successful in deporting or revoking anyone's citizenship prior to the project. As a matter of fact, until now, as far as I know, no one has ever been denaturalized or deported for war crimes.

The files do reflect that they had been closed because of lack of evidence to continue on further. But I think it would be fair to explain again the situation as of those dates.

Not in every case was there an investigation conducted. All I saw, for example, in some of the cases, which I pointed out arose as a result of Mr. Allen's letters, was a statement, a typewritten statement saying "memorandum for file." It just gave the background of the individual, and a statement at the very end, saying "it does not appear that this individual is amenable to Service proceeding."

Who wrote that or why I do not know. However, it must be looked at in the context of the time. This is 1966, the height of the Cold War. Whoever got these files as a result of the allegations by Mr. Allen may have taken the point of view that we would be beating our heads against a wall. We had at that time no liaison with Israel. We definitely were persona non grata with the Iron Curtain countries.

The possibility of getting witnesses was practically remote. In all our cases, we found very few survivors in the United States. The vast majority of the survivors, who testified in the 25 cases which are now being presented to various U.S. attorneys or to various immigration courts, for revocation or deportation stem from witnesses from the Iron Curtain countries.

Obviously, what happened, was, when the concentration camps were opened the survivors started to wander around. Now, the normal place for a survivor to go would be to his home town to see if any other survivors were left; therefore, these survivors went to their local communities in Poland, the Ukraine, Lithuania, and so forth.

Then, the Iron Curtain came down, smack, they could not get out, so the survivors remained in the Iron Curtain countries with the one exception. Israel, because of the attempt by the Jewish survivors to migrate to Israel, subsequent to World War II, many survivors did end up in Israel.

The Israeli Government has been far and beyond the call of duty in cooperating, in trying to help us.

Mr. EILBERG. Mr. Zutty, I believe you said that there were no statements or evidence presented up until 1973. Is that correct?

Mr. ZUTTY. What I did say was that we had no concrete evidence except in two cases. According to the files, we tried one of the cases and could not get documentation to deport this individual to Poland. That was one case. I think the case was tried in 1952.

There was one other case in which we were unsuccessful in getting a deportation.

Mr. EILBERG. Now over those years, were not Major Lengsfelder, of the Israel Police Department, and Simon Wiesenthal contributing data and statements?

Mr. ZUTTY. No, no. The first indication of Lengsfelder was when I attempted to attain liaison with the Israeli Government and that took a long time, for various bureaucratic reasons, but I finally was able to establish personal liaison by mail, with the cooperation of the Israeli Government, with Major Lengsfelder, and we did correspond person to person back and forth.

As for Weisenthal, we knew of his existence and once the project started we immediately got in touch with him and I did interview him in New York but, I might add, although he maintained a tremendous representation, and I am sure his work was fabulous, he has not furnished us with the names of any witnesses that were available that could help us.

His help has been strictly moral, shall we say, not evidentiary.

Mr. EILBERG. With regard to the files that you took over when you took over the special office, you say that some cases were reopened and reinvestigated. On what basis were those cases reopened?

Mr. ZUTTY. As I pointed out, the mandate or the directive that I was given was to investigate all cases regardless of whether they had been closed or not. Therefore, each and every case where there was an allegation involving genocide, maltreatment of prisoners and so forth, we investigated them out of hand, regardless of what the previous determination had been on them.

Mr. EILBERG. You started a new investigation on each of your active files?

Mr. ZUTTY. Each of the active files we did a complete investigation. On every case we went overseas to Israel and Russia.

Mr. EILBERG. You mentioned earlier the enormous bureaucratic difficulties you encountered specifically with the State Department.

Would you expand on that a little?

Mr. ZUTTY. Yes; from the inception it seems that time, for whatever reason, was always working against us. I was well aware that the majority of these individuals, by virtue of just history, must be in their 60's, 70's, and 80's, with rare exception we found a youngster of about our age.

The situation, heretofore, was such that I knew that we have to expedite our work or we are going to end up finding out evidence on a lot of dead people, and with this in mind, I immediately started to establish liaison with the Israeli Government, which I felt was our No. 1 source for witnesses.

As you know, or as anyone involved in investigation, in order to proceed against people we have to have eyewitness evidence. The fact that so and so heard that so and so committed atrocities, is of course, wasted evidence so we had to look for eyewitness survivors. As I mentioned, the only eyewitness survivors that we felt would be able to be found would be in either Israel or behind the Iron Curtain.

The way we tried to obtain liaison with the Israeli Government for witnesses, was by originally writing letters. By the way, I might point out that when you questioned Mr. Greene yesterday, and he didn't seem to have any knowledge as to what was happening, this is understandable. I was the one writing the letters. He is so far above me in position that he never sees the letters or correspondence.

I would send them off to Washington who, in turn, would transmit it to the State Department. I was the one doing all of the corresponding. I felt sorry for Mr. Greene, he didn't know the answers, but he was in no position to know them, nor should he be in a position to know them.

Mr. EILBERG. Didn't you discuss these matters with him?

Mr. ZUTTY. Not with Mr. Greene. I am way on the bottom of the totem pole. I was doing the work. I was not doing the operational work on the total immigration problem.

Mr. EILBERG. Please get back to my question regarding State Department cooperation.

Mr. ZUTTY. OK. Do you want me to continue on that?

Mr. EILBERG. Yes.

Mr. ZUTTY. Initially, I wrote to our office in Athens to try to establish liaison with Major Lengsfelder, of the Israel Police Department in Israel. After about 6 months or more, and repeatedly asking the central office what is happening with my request, finally about a year later. I received back word that Mr. Keating, who was our Ambassador to Israel, felt that this is something that should go through the State Department in Washington and not through his office.

So I in turn started the whole process again asking the State Department to establish liaison with Israel, which took about another few months or roughly about 1½ years in time.

I finally got word that the Israeli Government was very, very happy to cooperate with us, and I should contact the Israeli consul in New York. I subsequently did, and he came up to the office. I gave him photographs of all our subjects, and had a long discussion with him. He, in turn, said he would relate this information back to Lengsfelder. This was not a workable system, so, I asked permission if I could correspond directly with Major Lengsfelder, and he directly with me, which, in turn we did. We must have written hundreds of letters back and forth.

Mr. EILBERG. Are you saying that as far as the State Department is concerned, there were interminable delays?

Mr. ZUTTY. Yes. But again, the State Department has its own problems. For example, we repeatedly tried to obtain evidence behind the Iron Curtain. We wrote letter after letter asking for witnesses to be interviewed behind the Iron Curtain with no results, and it's really only until your trip or your committee's trip to Russia that they finally started to produce, and I might add for your own edification, Mr. Chairman, we received literally, maybe 100 to 150 beautifully typed testimonies of eyewitnesses, which included those who are not Jewish, most of the Jews were killed.

Some of the witnesses were people who actually did the killing or were involved with the killing. They were part of the militia groups, part of the people who did the killing. Of course, many times they would say, we were on the hill watching, and did none of the killing, but what I am trying to point out, we would get sometimes 20 of these affidavits back from Russia including photographs, maps, and descriptions just on one case.

Now I have heard, that the Russian authorities are very, very upset that despite all of the material that they have sent us, and they have really done a professional job, that nothing is happening and are somewhat reluctant to continue with this tremendous expense they incur in interviewing these people.

Mr. EILBERG. Are you speaking of the Israelis now?

Mr. ZUTTY. No, I am talking about the Russians now. The Israelis, we have had no derogatory comments. I think they realize just like in this country when a bill is introduced in Congress it takes 4

years sometimes to pass. So we have the same problem very often in our work. But I do feel that some effort should be made to expedite the prosecution of these cases, if we lose them, in court. But to get some action done because I feel that the Russian authorities themselves are going to find themselves fed up and not contribute to their previous efforts.

Mr. EILBERG. We will have to take a brief recess and vote, and we will be right back with some more questions.

Mr. ZUTTY. OK.

[A short recess was taken.]

Mr. EILBERG. The subcommittee will again come to order.

Mr. Zutty. May I correct one thing I have said previously just for the record?

Mr. EILBERG. Yes. -

Mr. ZUTTY. I had mentioned that the letter Charles Allen wrote to Robert Kennedy was in 1966. I have been corrected and it is 1963 that this letter originally was sent to Robert Kennedy.

Mr. EILBERG. Mr. Zutty, quite frankly we were somewhat disturbed over the apparent lack of knowledge exhibited by Mr. Greene at yesterday's hearing. You say he was in no position to know. I find it difficult to believe that during his role as Acting Commissioner and Deputy Commissioner, he did not have knowledge of, or at least have some interest in these matters.

I was here during all that period, and he knew very well the interest of the subcommittee. I find it rather difficult to accept your defense of him.

Mr. ZUTTY. Except he may have known. As he said to you yesterday, unless he was definitely sure of something, as he was under oath, he did not want to say anything unless he had personal knowledge of the actions that were going on, but I do not feel he knew what letters, what correspondence was being sent by my office.

Mr. EILBERG. Getting back to yourself, and the problems you described with the State Department, did you ever try to bring to the attention of somebody at top level of the State Department your problems?

Mr. ZUTTY. Normally I am precluded from talking directly with State Department. I have to talk through our central office. But I did mention the delay to Ms. Holtzman when I was interviewed by her on three occasions. I do believe that she in many cases was unsatisfied with the long delays by the State Department.

Mr. EILBERG. Who oversaw your work? Who was your superior?

Mr. ZUTTY. My superior was Mr. Wagner. He was Assistant District Director for Investigations.

Mr. EILBERG. You mentioned the need for Soviet cooperation and the very little positive results which have been achieved with the Soviet Union despite numerous affidavits that they have submitted.

In case you don't know, we have been trying steadily since 1975 to get cooperation. In fact, we opened the door we think in 1975 when our subcommittee met with Malyarov, the First Deputy Procurator General of the Soviet Union who offered to allow our investigators to go into his country to interview witnesses and to allow the witnesses to come to the United States.

Mr. ZUTTY. I am well aware, Mr. Chairman, that it is through your committee that the liaison with the Russian Government has been successful.

Mr. EILBERG. Then, after we communicated our objections and we came back to the State Department and others, in November 1976, I wrote former Attorney General Levi requesting the Department of Justice to make arrangements to have INS officials travel to the Soviet Union for the purpose of taking statements, and again in April 1977 I requested the same thing. I am advised that the Department of Justice has only now, for the first time, as a matter of fact, since we nailed the Soviets down in terms of their commitment to do it, sent members of the special litigation unit to Russia.

Would you care to comment on the long delay in responding to our request—that is, from 1975 to present—to go behind the Iron Curtain?

Mr. ZUTTY. I think these were normal bureaucratic delays. I am more concerned with the fact that—

Mr. EILBERG. You just said a moment ago that the State Department was to blame.

Mr. ZUTTY. This is prior to 1975. Subsequent to 1975, I think the action has greatly accelerated. I think since 1975, as a matter of fact, the State Department basically has been very, very cooperative. It was from 1973 to 1975 where I speak of, where there has been the long delays. Starting with 1975 and subsequently, I think the State Department realized the extent of the importance of the investigations and did cooperate fully with us on every request, but it is true that sometimes a letter would take a long time getting from myself to our central office to the State Department to the American Embassy in the country where we were sending it.

Mr. EILBERG. Prior to 1975, what offices or persons did you have any difficulty with in the State Department in terms of delay?

Mr. ZUTTY. Mr. Chairman, I personally did not correspond with anybody in the State Department. My vehicle, or the vehicle I used for correspondence with the State Department was by sending a letter to our central office in Washington, who in turn would forward the information or request the information through the State Department.

Mr. EILBERG. Mr. Zutty, you stated that when you took charge of this project in New York you went over all the closed cases. Did you find any evidence of deficiencies or misconduct on the part of INS officials involved in the old investigations?

Mr. ZUTTY. No; on the contrary, I have heard testimony or allegations of conspiracies, of malfeasance in office, and so forth, and I might add very candidly, I know that many people will not want to believe the facts of the case. For example, after four investigations conducted by the FBI by the GAO, by the Immigration Service, and I think basically by your own group, yourself, no one has come up with any concrete evidence of any malfeasance, conspiracy, so forth. Footdragging, yes. Ineptitude, yes; bad decisions, yes. But nothing of any real determined effort by any group or any individuals to obstruct or to impede the investigation.

I have heard allegations of "Odessa" by certain individuals who testified—these are all figments of somebody's imagination as far as I am concerned.

Mr. EILBERG. You say up to 1973 there was no progress at all. What were the reasons for that?

Mr. ZUTTY. Well, now again I would just like to bring you back into time. The normal procedure of investigation of Nazi war criminals was as follows. There was no centralized office handling Nazi war criminals as we had since 1973 when the project was set in New York. When the allegation came in, it was handed to an investigator just like a prostitution case or a fraud case or any other case. It was not given any special consideration.

It was handled as a case involving a possible deportation or denaturalization charge. The investigator who handled it had to make his own determination as to the extent of the investigation and how much effort was going into it.

In those cases, that were handled prior to 1973, I might point out, other than the two cases I spoke of, the investigator was often hard pressed to find the means of how to investigate. We had no liaison with Russia or Israel. Local witnesses were practically unobtainable. So what was he going to do, check the Minnesota Wildlife Society or something?

Mr. EILBERG. In that regard, your special unit in New York City perhaps was most noted for its failure to accomplish anything in this direction in this area. What is the reason for that?

Mr. ZUTTY. I take very strong exception to what you say. First: I want to point out I have heard criticism of our project center but I have heard no applause. What I might point out, at no time in the history of the Immigration Service has there ever been as successful results, as we achieved. I want to point out we have "made" 25 cases. When I say "we," the project control office found evidence on 25 cases. If you would look at some of the other statistics in fraud or denaturalization, they might in one in a hundred be successful in deportation, maybe even greater odds.

We have gotten a 25-percent success in finding the evidence. Our job is to find the evidence. Our job is not to go further than presenting it to the U.S. attorney. I am talking about investigations now. We had a 25-percent success ratio. At no time did anyone compliment—

Mr. EILBERG. How do you measure success?

Mr. ZUTTY. Success is measured in forwarding evidence or presentation of the case to a U.S. attorney or to a trial attorney for prosecution.

Mr. EILBERG. So in each of these cases, you had a statement from a witness that had not been obtained prior to that time.

Mr. ZUTTY. Just envision this. These are crimes that happened 35 years ago. To find surviving witnesses who would be willing to testify to these facts we obtained, and then presented them to the U.S. attorney, I think it is remarkable and yet all I have heard from Ms. Holtzman and the various members is criticism, for whatever reason I don't know.

Mr. EILBERG. Are you saying that, having made the cases, you then did something with the files afterwards to offer them for prosecution?

Mr. ZUTTY. All right, I will go through it very briefly. After we obtained sufficient eyewitness evidence to proceed, we would send the file with relating documents and all the evidence to a respective U.S. attorney for denaturalization—through channels of course. For deportation, we would send it to our trial attorney section. That was our extent of the investigation and responsibility. After that, I agree there was a long footdragging.

Mr. EILBERG. After that there was nothing.

Mr. ZUTTY. No argument. But that is not the investigation that is at fault. In other words, you should go after the Department of Justice, the U.S. attorney. They just created, under your bailiwick I understand, a whole new group. They took the whole section out of New York, sent it down to Washington, put in a grade 15 and four 14's, and still they are getting no place with all this high-priced help.

Mr. EILBERG. We have been after them and we will be back after them.

Let's take a brief recess again.

[Recess.]

Mr. EILBERG. Mr. Zutty, you stated a few minutes ago that you were very pleased with the work of the special unit that you headed and that you had prepared 25 cases which you felt were, as I understood it, ready for prosecution—denaturalization or deportation.

This is an open meeting and under the House rules, we can't tend to defame and don't intend to defame anyone. I will be very grateful to you if you would identify those names for us. Would you do that privately?

Mr. ZUTTY. I am sure any member of the Immigration Service now in Washington—Mr. Mendelsohn would have them at his fingertips.

Mr. EILBERG. Let me tell you that we have not gotten any such assessment from Mr. Mendelsohn, with whom we have substantial contact.

Mr. ZUTTY. I have no objection. I will give you what I remember. I have been out of the Service for 6 months and I am living the wonderful life of a retiree.

Mr. EILBERG. Suppose we show you the names we have. Do you feel you could identify them?

Mr. ZUTTY. I would be glad to.

Mr. EILBERG. Your office was very important at the time that you worked there. I would just like to know a little about the activities of the normal workday in the project control office. How did you go about your work?

Mr. ZUTTY. We had all the files in New York. We had five 4-drawer file cabinets full of files. They were only used by myself and Mr. Weiss, who was part of my group. Our normal procedure—while these cases were in process—if you want me to start from the very beginning when the allegations came in, we would send for the file. After we got the file we would first attempt to see whether the subject was alive and where he was residing, because it seemed silly to do any investigation on dead people.

Subsequently we would then make all efforts to obtain an eyewitness or eyewitnesses, as the case may be, to substantiate the allega-

tions. We worked from 8:30 to 5 p.m. We put in overtime as needed. As I said, these were our only duties, the investigation of Nazi war criminals.

Mr. EILBERG. With respect to the eyewitnesses, how would you go about finding them, and what would you do with their names?

Mr. ZUTTY. At the beginning when we had these 70 some-odd cases, we handled this as a group. I sent the 70 names with the backgrounds and allegations and the photographs to Israel, to Major Lengsfelder, and asked him to ascertain if within Israel they could locate any eyewitnesses to the crimes allegedly committed by our subjects.

We prepared dossiers—after we established liaison with the State Department for transmission to Germany and subsequently to Russia. We prepared a dossier containing basically the background of the subject, the photograph and the allegations.

Mr. EILBERG. Then you brought the files back and sent them to the central office?

Mr. ZUTTY. Sir?

Mr. EILBERG. Did you send the files to the central office?

Mr. ZUTTY. No. We kept all files in New York. I understand that they kept a relating file jacket in Washington where they would keep any material that we were corresponding on.

Mr. EILBERG. No doubt you were impatient, as we sometimes are. What did you do to follow up your request to the central office?

Mr. ZUTTY. I repeatedly made telephonic requests, letters, and so forth, asking what is the status of the case? However, once the case was in the hands of the U.S. attorney, there was very little we could do.

Mr. EILBERG. Who did you make the calls to, specifically?

Mr. ZUTTY. Specifically I would telephone John Stevenson. That was my basic man in Washington.

Mr. EILBERG. What was his position?

Mr. ZUTTY. He was an investigator and he was assigned solely to handle Nazi war criminal matters in Washington. Prior to Mr. Stevenson there was a Mr. Carey, who retired. And there was someone else for a few weeks in an interim period.

Mr. EILBERG. Did you ever complain about the slowness with which central office was operating in terms of the files that you had fully prepared for prosecution?

Mr. ZUTTY. Of course I would complain and say, "What is happening with these cases?"

Mr. EILBERG. To whom would you complain?

Mr. ZUTTY. Mr. Stevenson. I am not privy normally to speak to people other than my immediate supervisor on the thing. But the delay was not in the investigation end of it. I must repeat. For example, some of these cases are pending for 3 years now. It is not unusual, though, because I understand the Brownsteiner case in Germany—is still going on since 1972, 6 years, and still going on there.

Mr. EILBERG. So you reported only to your superior here in Washington and none else?

Mr. ZUTTY. There was no one else—well, I spoke to a corresponding individual in Burlington. We have a three-way system. We have a district, a region, and a central office. My normal approach

was to deal with our region, but because of the nature of this work and the importance of it, I very often would speak directly with our man in Washington.

Mr. EILBERG. Who did Stevenson report to?

Mr. ZUTTY. Stevenson would report to his chief investigations in Washington. His name was—it eludes me for the moment. I can get you the name.

Mr. EILBERG. Was it Bertness?

Mr. ZUTTY. Bertness, he came onboard later. There was someone before Bertness. Bertness was the last year or so of my tenure, but prior to that there was someone else.

Mr. EILBERG. Would you evaluate the efficiency of the New York project control office and the procedures under which it operated.

Mr. ZUTTY. I don't believe that deficiency is a good word. I didn't feel we were operating under any deficiency. As a matter of fact, I was always completely amazed that we were able to obtain—when I say “we,” it is really through the efforts of the Israeli Government or the Russian Government per se to find witnesses of crimes that happened 35 years ago. It always struck me as remarkable they were able to find survivors, especially in Israel, because in Russia there were survivors.

Mr. EILBERG. To what extent were you hampered by the inability to obtain information from foreign Communist countries?

Mr. ZUTTY. I found no interference. As a matter of fact, I would say on the contrary, many of the organizations we dealt with, for example the American Jewish Congress, per se, were remarkably helpful in trying to help us obtain evidence. Not all organizations, but that one particularly was most helpful.

Mr. EILBERG. What is your reaction to the GAO investigation and report on this matter?

Mr. ZUTTY. I read the GAO report and I was somewhat surprised that they took such a pussyfoot attitude about the whole thing. Don't forget the GAO individuals were with me for 1 year, right on my tail for 1 year in New York, and they consulted with me continually. I must have spent hundreds and hundreds of hours going over cases with them, explaining what happened.

Mr. EILBERG. What do you mean the report indicates “pussyfooting” to you?

Mr. ZUTTY. I don't feel they have taken a strong enough stand as to what they found or didn't find out. If they found no evidence of conspiracy, I felt they could have said so more strongly. They do say: “Widespread conspiracy to obstruct probes of alleged war criminals not supported by available evidence.”

That is quite true, but after all the information I have given them and all the files we have gone over and seen the complete results of our work, I feel they could have taken a more definitive stand as to whether there was any conspiracy or efforts to hinder the investigation.

I don't particularly feel that it accomplished anything other than it substantiates what I have always felt, that there is no conspiracy.

Mr. EILBERG. Mr. Zutty, thank you very much for coming down.

Mr. ZUTTY. May I make one comment which I think is really more important on the so-called conspiracy phase of it. What dis-

turbs me more than anything, Mr. Chairman, is that there is nothing in our present law to preclude the entry into the United States of individuals involved in committing genocide—I am talking now today from 1952 to date. For example, if the Vietnamese, North Vietnamese who killed American prisoners, sought entrance to the United States today, there would be nothing to exclude them.

If some of the Japanese who threw bombs into the airport and tried to kill innocent Americans—there are no laws to exclude them. Anybody today involved in terrorism or genocide, there is no law in our books to exclude them.

Ms. Holtzman recently introduced a bill—3 years ago she introduced one for Nazis—but I am talking about current bills.

Mr. EILBERG. Mr. Zutty, we have gone into the subject on the subcommittee and we reported out about 2 or 3 weeks ago a bill which would prevent the kinds of people you are talking about from entering this country. We just hope we have enough time to get it through the House and Senate.

Mr. ZUTTY. May I thank you very much for hearing me and bearing with me. I get sometimes a little hot but I appreciate your kind indulgence.

Mr. EILBERG. Thank you, Mr. Zutty.

Mr. EILBERG. Next we have Mr. Vincent Schiano, former Immigration and Naturalization Service attorney, who has been very interested and active in this area.

Mr. Schiano, we are pleased to welcome you.

Do you solemnly swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. SCHIANO. I do, sir.

TESTIMONY OF VINCENT SCHIANO, FORMER IMMIGRATION AND NATURALIZATION SERVICE ATTORNEY

Mr. EILBERG. If you have a statement you are certainly free to read it or summarize it.

Mr. SCHIANO. May I read it? It is addressed to you, Mr. Eilberg. It is dated July 17.

Your letter of July 6 did not arrive until July 13, on which day I was absent from my office. It leaves me little time to respond in accordance with your request. Nevertheless, I shall hurriedly record some of my observations.

First and foremost, I congratulate you, Chairman Eilberg, for the work you and the members of your committee have done on this problem. My especially good wishes to Congressperson Holtzman, to whom I first addressed my complaint 5 years ago. Her intense and intelligent monitoring of the actions and inefficiencies of the agencies involved helped to bring about the revolutionary changes in the Government's approach to the handling of allegations and complaints of alleged Nazi war criminals in the United States.

For the moment, let me repeat the feelings I had in 1972 and 1973 when I was assigned the prosecution of a deportation case against a denaturalized alien who was convicted of what we refer to as "war crimes." The publicity surrounding that case naturally brought forth new and additional complaints against others resid-

ing in the United States. Taken on the whole, the problems we had at that time in that case and the problems with the desire to proceed with other cases, caused me dismay at the overall reaction of my supervisors locally and in Washington.

I could not believe and I could not abide by the thought that this Government would deprive itself of the right to thoroughly inquire into the role that any suspect played in Hitler's Germany, Hitler's SS or Hitler's concentration camps. It is no longer necessary to prove the monstrous brutality that took place at that point in time. The success of the SS, the ruthless Nazis and the concentration camp system was not possible without dedicated and loyal followers, camp commandants or camp guards, et cetera. If they did not enjoy, then they acquiesced in those actions against human decency.

This antithesis of humaneness demanded dedication to the practice of hell. In the final analysis, it is not only the right of the Government to inquire into this matter but the obligation to American law and justice and to history to examine the actions and conduct of the suspects during that period of time—the worst period in all of human history.

I know it was with this conviction that this committee demanded that the General Accounting Office undertake the investigation of the failure or reluctance of the Immigration Service and other agencies to investigate and prosecute the appropriately called Nazi war criminals. In my opinion, that is exactly what the General Accounting Office did not do, thus further delaying the search for truth. Peculiarly, the complaint of the GAO is that the sands of time erased the trail and possibly the evidence. In hyperbolic fashion, it proclaims there was no finding of a widespread conspiracy. There was no such accusation.

I could only compare it to the housewife who calls the police to investigate a prowler or burglar. After the armada of police cars arrive, their report is returned that they found neither planes nor tanks or any invading armed forces, but that it could not exclude the possibility of an aggressive maneuver by some unknown hostile forces. I could at this point chronicle some of the specific examples. But it is difficult to make a full assessment since we do not know the names of the persons who were interviewed or who declared to the GAO that there was no obstruction.

The GAO feels most comfortable in its report when commenting on post-1973 activities, but that is understandable. The present structure was in a large measure recommended in 1973. It was the result of the persistent prodding by this committee and in line with the letter of Ms. Holtzman of May 1974. I consulted with Ms. Holtzman at that time and made some of the recommendations which she so articulately set forth in the letter. By the way, doesn't this acceptance of this present crusade justify our feelings of dismay in 1972 and 1973? Why wasn't it done before?

I understand that some \$2.6 million has now been allocated to insure a proper funding of this special task force. I congratulate the Government, but I must confess to a certain envy. The budget Tony DeVito and I enjoyed was more like \$2.6 expended mostly for coffee and doughnuts for the visiting press. Nowhere in the GAO report do I see coverage of the complaints of possible impropriety

in the memorandum which transmitted one case for review at the district level. That memorandum was written by an officer of the central office and if the suggestions contained therein were followed, the case would have been further delayed, if not altogether shunted aside.

Mr. EILBERG. Mr. Schiano, can you state the name of that individual?

Mr. SCHIANO. Yes. Carl Burrows.

Mr. EILBERG. Thank you.

Mr. SCHIANO. I can not excuse that attitude even on the ground of stupidity. The memorandum contained carefully chosen words and expressions. Later events proved that it was an attempt to cover up certain actions. Perhaps because of such happenings the GAO inquiry could not ascertain by their review of the files why some of those cases were not investigated. This committee must fill in the voids left by the GAO investigation, for that report raises more questions than it answers.

When I finished reading the report and rubbed my eyes, a colleague asked me what I thought about it. My mind groped for words and I could only recall, not too accurately, the words in Alice in Wonderland:

The sun was shining bright, shining with all its might.
T'was odd, you see, because it was the middle of the night.

It is my hope that this committee will not let this opportunity pass without calling before it all those in positions of authority to answer or explain their actions on the case in question and on other cases. I limit myself to matters prior to 1973. At this moment, I wish to interrupt my own thoughts to pay homage to the employees of the Immigration Service. Having spent some 20 years with them, I have known them to be honest and dedicated employees. Failures that may have been experienced in my investigation were normally due to lack of proper and inspired leadership at higher levels.

I have taken a rather strong stand on these issues for many reasons. The committee agrees that we must assure a religious observance to proper and precise legal procedures. I shied away from sensationalism and I maintained that the prosecution of Nazis within the United States is a responsibility of American law and justice. To make it a matter of select or group interest is to insult that particular segment of our population. As most of my Jewish friends who are leaders in their community agreed, the investigation, prosecution, and punishment of Nazi war criminals is not a Jewish question.

To believe so would be anti-Jewish. We would be saying that if Hitler successfully exterminated all the Jews, there would not have been a Nuremberg trial for the atrocities committed. The morality we expressed in Nuremberg is the morality we express today. We do not believe that any man has the right to do an evil or wicked act. We believe as was expressed in Nuremberg, that while political loyalty and military obedience are commendable virtues, there comes a time when if a man would follow his conscience, he must refuse to follow his leader. Each individual must then be responsible for his own acts. And if we did not condone an Adolph Eich-

mann for following his leader, we must insist upon the responsibility for the actions taken in all of these cases that we speak of.

While I was involved in the prosecution of one of these cases, I felt oppressed. We were denied a telephone, an office, any funding or even courtesies. The oppression reached the point where we were placed in a cubicle which "shrunk" from week to week. For two of us to occupy that office, one of us would have to climb over the desk. This is not an exaggeration. The press was witness to this. This is where we interviewed the witnesses, and also representatives of foreign governments.

From here we ran across the hall and waited for the use of a telephone or went into the public hallway and the coin box became our office telephone. An apt observation made of these doings were expressed by one who is now an Immigration judge. Shaking his head and with a wry smile, he remarked, "If I had money I would put it on Broadway." I failed to ask whether he considered it a comedy or a tragedy. Again, evertng to our cubicle, we penned memorandums to our supervisors asking what was to be done about the "other Nazis." I suggested a special task force and I advised that additional allegations can be expected since the prosecution of that case will beget widespread interest and make available additional information.

At first we were told to go ahead. Within 24 hours that order was rescinded and my cubicle got smaller. I can only imagine that someone at the central office was in the midst of reading Edgar Allan Poe's "The Cask of Amontillado." Of course, this was his sense of poetic justice. I feel slightly insulted by the GAO report and its failure to conduct vigorous and searching inquiries.

In conclusion, I believe the task is unfinished and left for this committee to pursue.

Mr. EILBERG. Thank you, Mr. Schiano, for a very thoughtful statement.

On page 7 in the latter part of your statement you indicate that—you were told to go ahead with a special task force investigation only to receive contrary instructions "within 24 hours."

Mr. SCHIANO. You are talking about the GAO report?

Mr. EILBERG. No. I refer to your statement. Who told you to go ahead?

Mr. SCHIANO. I wrote a memorandum to Mr. Marks.

Mr. EILBERG. Mr. Marks?

Mr. SCHIANO. The District Director. He said go ahead. I said we have other cases.

Mr. EILBERG. What was his name?

Mr. SCHIANO. Sol Marks, District Director, New York. Within 24 hours I was told not to.

Mr. EILBERG. By whom?

Mr. SCHIANO. By Mr. Marks. I gather from the conversation this was not his personal instruction, though.

Mr. EILBERG. Did he give any reason why you were not to go ahead?

Mr. SCHIANO. I think he received instruction from Washington. I wrote a memorandum saying my present duties limited to what? And I believe I stated, are they limited to the—that I was involved in the *Lenin* case. He said to limit my duties solely to those two

matters, the *Lenin* case and the revision of the trial attorney handbook.

Mr. EILBERG. Do you know from whom Mr. Marks received his orders or directions?

Mr. SCHIANO. My impression is from Washington.

Mr. EILBERG. But you don't know who?

Mr. SCHIANO. No.

Mr. EILBERG. When Mr. DeVito testified yesterday he reiterated most of the charges that were carried earlier in the book "Wanted." Would you care to comment generally on his charges?

Mr. SCHIANO. On some that I recall I think his allusion to Odessa go beyond the horizons of mere sobriety. I do not think they can be expanded upon. I say it is an exaggeration. I do not believe in any "theater of widespread cooperation in the Immigration Service." I do not know what specific things he may have said. DeVito came into the case we had after the investigation was completed, after the case was started, and that was one of the problems I had in the case in asking for help. I was chief attorney in charge of some cases in the New York office. I was prosecuting the *Lenin* case, I think at that time the results of the "*Happy Hooker* case," and we had the *Brownsteiner* case and I was a little beset with problems not having a telephone or a secretary. I did ask for help. It took some time before I received help in the form of another investigator.

Mr. EILBERG. Perhaps you have answered this, but just to be sure, will you describe for the subcommittee your role in INS in prosecuting cases of alleged Nazi war criminals?

Mr. SCHIANO. What?

Mr. EILBERG. What was your role in prosecuting Nazi war criminals?

Mr. SCHIANO. I was assigned the Ryan case and we received other information before other Nazis and we requested that we get organized and make this a major project. It was a matter of tremendous impact and of great responsibility.

Mr. EILBERG. When did you cease to perform this work, and for what reasons?

Mr. SCHIANO. I don't know the reasons, but upon extradition proceedings in the *Ryan* case and after that memorandum I referred to before that rescinded the order of going ahead, that was the end of my participation.

Mr. EILBERG. Did you prosecute any other alleged Nazi war criminals?

Mr. SCHIANO. After that?

Mr. EILBERG. No, either before or after.

Mr. SCHIANO. Yes. Going way back I think in the 1950s we had the Hungarian cases at that time. At that time there was a different attitude to go ahead.

Mr. EILBERG. Were any deportations or denaturalizations as a result of that?

Mr. SCHIANO. Deportation cases, Hungarians. There was a *Kapo* case I referred to. He was allegedly cooperating with the Nazis. There were some others I do not recall the names right now.

Mr. EILBERG. The committee is aware of instructions, given you by one of your superiors at the time you were INS chief trial

lawyer in the *Ryan* case, to develop a legal position that prosecution of Mrs. Ryan was precluded by the "Woodby rule." Could you state for the record the meaning of the term Woodby rule and elaborate on the circumstances surrounding that incident?

Mr. SCHIANO. That was a case for the Supreme Court which said that a case must be proved by clear, convincing and unequivocal evidence. It was November of 1971. I gave responses to it. The memorandum of the Department of Justice is setting forth the legal case adequately answered that. Certainly not less was required to denaturalize the alien than to deport.

Mr. EILBERG. What was the ruling?

Mr. SCHIANO. It is a case in the Supreme Court, a case against an alien, as a legal issue deportability must be established by clear, convincing and unequivocal evidence.

In other words, it prosecuted the case almost to a criminal case as to burden of proof.

Mr. EILBERG. That would be in a naturalization proceeding?

Mr. SCHIANO. The rule was applied to the deportation cases.

Mr. EILBERG. It would be applied to deportation cases. Would it apply to denaturalization?

Mr. SCHIANO. The deportability issue.

Mr. EILBERG. Mr. Schiano, you have implied that there were improprieties and irregularities involved in the case of a Mr. Malaxa. You have further alleged that an offer of money was made to you as prosecutor in that case. Would you care to discuss that case for us?

Mr. SCHIANO. That goes back to about 1955. I think it is probably the longest case in the history of the Immigration Service. It took about 60 days of trial and 59 volumes of testimony. The exhibits alone took with it some three drawers of a cabinet. It had to do with a Romanian industrialist born December 10, 1884, in Romania. He reputedly financed a Countess Milhaescu and through her influence obtained advantageous position with the government of Romania building his industries. He was alleged to have cooperated with the Nazis when they came into power. That was following 1936 when the foreign minister was replaced by a pro-German foreign minister.

I think later when the Nazis came into Romania, I think it was Albert Goering, the brother of Herman Goering, who established certain corporations in collusion with Mr. Malaxa.

In 1941 a rebellion took place with the Romanian Iron Guard, which was the Romanian counterpart of the Nazis, and probably even more vicious in their anti-Semitic attitude. That Iron Guard rebellion took place in January 1941. Malaxa was alleged to have played some role in the financing of the Iron Guard. The rebellion was put down. I think Malaxa may have been informally charged. I forgot the details of that. Later on, when the Russians came into Romania, which was about August of 1944, Malaxa seemed to be able to deal with that problem adequately because there was a decree issued in 1944 whereby he was awarded some 2.25 million U.S. dollars for his industries in Romania, and that decree was signed by cabinet ministers, most of whom were communists.

He came to the United States as part of a trade mission. There were allegations he was involved with members of the OSS to facilitate his entry into the United States.

Some of the laws that were passed while he was in Romania which enhanced his position were laws which divested Jews of their property and if they were given the opportunity to leave Romania, those who were absent owners, the property would cede to the state, and the state would then reallocate the industries to other industrialists.

Mr. EILBERG. What charges were made against him? What was it he was thought to be guilty of?

Mr. SCHIANO. He was not convicted of any crimes. He became a resident here under the law then existing. I was not in that part of the case, but he proceeded through a corporation that was involved in the manufacture of seamless tubing, at that time the Western Tube Co., on the west coast, with offices in New York.

The sequence of the events in the case were quite involved. The office is supposed to be in California. The case was approved in Washington, the pre-examination process existing at that time took place elsewhere. He went to Canada to get his visa and then settled in New York, and that was the end of the corporation, except the corporation had made application for a \$30 million RFC loan at the time, which was granted Malaxa. The benefit would have been about \$4 million.

Mr. EILBERG. You prosecuted him?

Mr. SCHIANO. Yes.

Mr. EILBERG. What for?

Mr. SCHIANO. That was an exclusion process upon his return from Argentina in 1955. I demanded he take the witness stand since he was an applicant for a readmission to the United States. He refused to answer any of my questions and throughout those proceedings which took 60 days of trial, never answered a single question of mine. I asked it be made a rule of law he answer those questions. In fact, I said if we are wrong in our position, then we should have a hearing de novo; the entire tribunal was at fault.

Mr. EILBERG. Was an effort made to bribe you in connection with that matter?

Mr. SCHIANO. Oh, that was an incident which took place. There is a memorandum in the file. I would have to yield to whatever I put down in that memorandum. A Romanian came to see me, and I was sitting there with other people involved in the case. I think Frank Lyons, who is now an Immigration judge. And the way he put it very artfully, he said he had \$100,000 or \$200,000 which he was going to dispose of this problem and asked me for suggestions as to what I should do with the money, how to dispose of it.

I told him, being poor, I had no use for it, but he had adequate counsel and he should not trouble me about these questions. There was never a direct offer saying, "Here is a hundred thousand dollars; what can be done?"

Mr. EILBERG. What was the basis for his readmittance into the United States?

Mr. SCHIANO. He was readmitted to the United States, which was a most peculiar decision, by the Board of Immigration Appeals. In fact, the commission at that time expressed dissatisfaction and

asked it be remanded to the Attorney General. The Attorney General, Rogers at the time, said the position of the Government was correct and he was required to answer our questions, but nevertheless the decision of the board overruling the Immigration judge to exclude him was upheld. He was readmitted.

I think the overriding consideration was the man's age because they did point that out in the decision. He was over 60 at the time.

Mr. EILBERG. Was there any pressure brought in the direction of obtaining his readmission?

Mr. SCHIANO. I don't know. I don't have any personal knowledge. I was not completely satisfied with the strategies that were offered to me at the time. I think one of the maneuvers I had in time at the opening of the hearing in Florida in 1955, I suggested if he does not answer questions, that we stop then and there to determine that legal issue. If I were proven correct in my theory, then he would have to be made to answer questions or suffer in his application for readmission. If he was correct, then we would have to redo the forum in accordance with whatever rule of law was established. I was overruled by Washington, and they suggested I put my case in chide into the evidence even without his testimony.

Mr. EILBERG. Who overruled you?

Mr. SCHIANO. I don't know for sure. I have my own suspicions of it and, I don't know if it would be proper for me to voice suspicions.

Mr. EILBERG. Mr. Schiano, you were interviewed in the course of the GAO investigation into this subject. Can you tell us what transpired during that interview?

Mr. SCHIANO. You mean with the GAO?

Mr. EILBERG. Yes.

Mr. SCHIANO. They asked me several questions they summarized in their statement which I think probably is made available to this committee. This summarization is correct though not complete as to the entire conversation. I did say one of the specific points is that Burrows memorandum of November 1971, I said I would like to have the answer to why it was written by someone in investigations when the case had reached beyond that phase, when there was a general counsel in Washington who could adequately reply to any legal theories or legal expressions at that level.

I found it appropriate to remand the matter to the district level for a legal opinion and to say in that memorandum that we—well, I forget the exact language, to the effect that before we go ahead let's consider whether it is worthwhile prosecuting a case for someone accused of a crime which was already amnestied. It was an undue concern.

Mr. EILBERG. Did you level charges during that interview with respect to INS or a third agency involving Nazi war criminal investigations?

Mr. SCHIANO. Charges? That would not be the proper word. I was asked for information and I got it. I felt, for instance, compared to the spirit and enthusiasm and guidance I got on the case I had at that time, the *Lenin* case, where I was offered whatever assistance I wanted compared to the *Ryan* case, where I got no assistance, I felt that was a cause for complaint and disappointment.

Mr. EILBERG. Mr. Schiano, could you comment on the effectiveness of the personnel and procedures utilized between 1973 and

1977 under the New York project control office? Did it expedite or impede the Nazi war criminal effort?

Mr. SCHIANO. From 1973 to 1977. I would not have any direct information.

Mr. EILBERG. Can you evaluate the current personnel procedures established under the new special litigation unit?

Mr. SCHIANO. No. I am afraid I believe in results and I think that is what we have to go by.

Mr. EILBERG. Subsequent to your departure from INS, did you continue to interest yourself in a private capacity in the investigation of these individuals?

Mr. SCHIANO. Yes. I offered my help to whomever chose it. I did lecture at various schools, institutions, concerning the problem of Nazis and what I consider to be the principal impact upon our society, and the evils of toleration. I remarked, I believe, at the time that I failed to once hear that any one of these suspects who was convicted, anywhere in the world, have expressed regret or remorse over their actions. Even Adolph Eichmann before he was executed said "I regret nothing." That disturbed me. Our failure to condemn this type of conduct is what bothered me.

Mr. HALL. I have listened with great interest to what you have stated and what some of the other persons have testified to.

We have heard from Mr. DeVito, Mr. Charles Allen, and it appears that somewhere in this maze of bureaucracy there is always that unseen hand that is telling you to stop whatever you are doing toward the apprehension or the procuring of evidence that would place these matters in a courthouse, in a courtroom where they belong.

Is that a fair statement on my part?

Mr. SCHIANO. There is that funny feeling one gets that things are going on that we can't put our finger on that expresses a certain attitudinal policy.

Mr. HALL. You were asked by our chairman a moment ago who it was, I believe this is on page 7 of your statement, you stated that you were told to go ahead with your work, your investigation and you were asked who it was that told you that.

I think you answered somebody.

Mr. SCHIANO. Right.

Mr. HALL. Now, the next question here or next statement in your answer is that within 24 hours that order was rescinded. Now, who rescinded the order?

Mr. SCHIANO. That order was communicated to me by or through Mr. Marks, but if he originated the order, I doubt it.

Mr. HALL. Is that Mr. Sol Marks?

Mr. SCHIANO. Sol Marks, District Director for—

Mr. HALL. What position did he occupy at that time?

Mr. SCHIANO. District Director and the immediate supervisor.

Mr. HALL. And who was his immediate supervisor at that time?

Mr. SCHIANO. I think, on this case or generally? There is a regional Commissioner and there is your central office, the Commissioner in Washington.

Mr. HALL. When you mention the central office, are you talking about the Washington office?

Mr. SCHIANO. Yes.

Mr. HALL. Or are you talking about New York?

Mr. SCHIANO. No, central office to me is the Washington office.

Mr. HALL. Do you have any belief at this time as to who gave the order or who rescinded that order after 24 hours?

Mr. SCHIANO. No. It would be unfair for me to even speculate.

Mr. HALL. What were you told to do or not to do?

Mr. SCHIANO. I think I penned my view as to what I was supposed to do in writing. I don't have any of my memoranda. And, in fact, I gave quite a few of my memoranda to DeVito for safekeeping since I had no place to keep them, and since most of my files were gone through.

Mr. HALL. Well, does Mr. DeVito still have your files that you turned over to him?

Mr. SCHIANO. Well, he had some copies of memorandums that I wrote. He should still have them, I think. He saved them; I don't know. But there was a memorandum I wrote to Mr. Marks as an expression of understanding as to what we were supposed to do, and go ahead and investigate these alleged Nazis.

Mr. HALL. Where is Mr. Marks now?

Mr. SCHIANO. I don't know; he is retired.

Mr. HALL. All right. Going back again to the statement that you have here, on page 4 at the middle of that report you state that nowhere in the GAO report do I see coverage of the complaints of possible impropriety in the memorandum which translates one case for review at the district level. Now, is there something that the GAO report does not have as a part of that report that it should have to make a complete report?

Mr. SCHIANO. Well, I told them about that memorandum from Mr. Burrows. I could read it to you. I think I have an accurate copy of it.

Mr. HALL. That is the memorandum from Mr. Burrows to Mr. Marks?

Mr. SCHIANO. Well, I think it was translated through channels to the region to the district level.

Mr. HALL. All right; telling you what?

Mr. SCHIANO. Well, I think if I read it might speak for itself.

Mr. HALL. That might help, yes, sir.

Mr. SCHIANO. The main body of the memo in the original text says:

Under date of September 30, 1971, I sent you copies of memoranda prepared by the General Counsel under dates April 16, 1971, and August 9, 1971. You will note in the August 9, 1971 memorandum a comment that he regards the obtainment of a consent judgment as a substantial achievement. Further, that the judgment will effectively revoke and set aside the order of the Court admitting the defendant to citizenship and cancel her certificate of naturalization.

In all probability, there is insufficient evidence of a clear, unequivocal, and convincing nature upon which we could initiate deportation proceedings on a charge other than one which be obviated by section 241(f). However, in view of the periodic and highly vocal interest in this case, it is requested that the New York office review the evidence at hand and furnish a memorandum through your office setting forth what evidence is available to support any deportation charge and the manner in which such evidence might be used if deportation proceedings were authorized. Your comment on the recommendation of the District Director, New York, including whether the case should be designated Top Priority, will be appreciated.

Please insure that no Order to Show Cause is issued in this case prior to review by this office of the sufficiency of the evidence proposed to be used and whether as a

matter of policy, a further attempt should be made to punish subject by deportation for the amnestied offenses of which she was convicted in Europe.

CARL G. BURROWS.

Mr. HALL. Were you speaking of the *Ryan* case at that time?

Mr. SCHIANO. Yes; this was the memorandum written transmitting the *Ryan* case down from the district to the central office.

Mr. HALL. The next question, if I may interrupt, why did Mrs. Ryan consent to be denaturalized?

Mr. SCHIANO. I don't know. If I were her attorney, I never would have.

Mr. HALL. What?

Mr. SCHIANO. If I were her attorney, I never would have agreed as a matter of legal—

Mr. HALL. I am from Texas, you from New York, and we don't talk the same way. I didn't understand.

Mr. SCHIANO. I said if I were her counsel I would never have advised her to consent to giving up her citizenship.

Mr. HALL. All right; by doing that she then became subject to extradition to Germany.

Mr. SCHIANO. She became an alien de novo.

Mr. HALL. She was extradited?

Mr. SCHIANO. She was extradited, yes.

Mr. HALL. How long has that trial been going on?

Mr. SCHIANO. Since August 1973.

Mr. HALL. Give me just a thumbnail statement as to what this woman did. She was at Ravensbruck, was she not?

Mr. SCHIANO. She was at Ravensbruck, she was convicted, I think, after a course of conduct in Ravensbruck for beating inmates, but she was never tried or convicted, as a course of conduct at Maidanek concentration camp in Poland.

Remember this, the charge against her for deportation was not necessarily a course of conduct during that period of time, but a conviction in Austria for a crime involving moral turpitude.

Now, that was important in light of this memorandum, because if the only charge was that she lied when she got a visa concerning herself, it would have been obviated as she said, as 241(f), which in substance says if you are married to a citizen we automatically excuse you from your fraud.

Mr. HALL. Do you know whether or not the INS ever formally or informally agreed not to deport Ryan if she would consent to denaturalization?

Mr. SCHIANO. No.

Mr. HALL. Was there a concerted effort made by someone, whether at the central office, or the district office, to hinder and stop the prosecution of this Ryan woman?

Mr. SCHIANO. You mean probably at the deportation level?

Mr. HALL. At any level when you were investigating that case.

Mr. SCHIANO. This memorandum, if you read further, represents to me a certain obstruction. It says:

"However, in view of the periodic and highly vocal interest in this case, it is requested the New York office review the evidence at hand and furnish a memorandum through your office setting forth what evidence is available to support any deportation charge, and the manner in which such evidence might be used if deportation proceedings were authorized.

"Your comments on the recommendation of the District Director, New York, including whether the case should be assigned top priority would be appreciated. Please ensure that no order to show cause is issued in this case prior to review by this office of the sufficiency of the evidence proposed to be used, and whether as a matter of policy a further attempt should be made to punish subject by deportation for the amassed offenses of which she was convicted in Europe.

Mr. HALL. Who wrote that?

Mr. SCHIANO. Carl Burrows.

Mr. HALL. Who was that directed to?

Mr. SCHIANO. I think it was through the regional office. I don't have the heading.

Mr. HALL. Is that the memorandum you have referenced to when you say, "The memorandum was written by an officer of the Central Office, and if the suggestions contained therein were followed, the case would have been further delayed, if not altogether shunted aside."

Mr. SCHIANO. Right.

Mr. HALL. That is the memorandum you just read?

Mr. SCHIANO. Yes.

Mr. HALL. Now, you make this further statement: "The memorandum contained carefully chosen words and expressions". What do you mean by that, sir?

Mr. SCHIANO. Well, at the time when I wrote it I was not aware of it. Later I became aware of it. For instance, when it says in all probability there is insufficient evidence of a clear, unequivocal and convincing nature upon which we can initial deportation proceedings on a charge other than one which would be obviated by section 241(f); now we know under 241(f), while we forgive a fraud, it says provided the person is otherwise admissible or otherwise not, otherwise inadmissible, meaning if you have an additional charge too for forgiveness, 241(f) is not operative.

Mr. HALL. Well, you had an additional charge in Germany, did you not?

Mr. SCHIANO. Exactly. This proves an unnecessary statement unless there was some fear connected with that additional charge. And later I learned, when the attorney brought out for the defense on the extradition claimed that the conviction record was improperly and illegally obtained in Austria through the auspices of the CIA.

He stated that in his court cases.

Mr. HALL. We are talking specifically now about the *Ryan* case, and I know we can talk indefinitely about it and it's of great interest, but let me ask you this question:

I notice in the biographical sketch you have given to us that you mention other cases that you investigated. Without my enumerating those cases, did you have additional interference, from any people in the district office or the central office with reference to your attempted investigation of these other Nazi war criminals, alleged Nazi war criminals?

Mr. SCHIANO. No; I don't think I listed other Nazi war criminals in my statement.

Mr. HALL. All right. This is the only Nazi criminal——

Mr. SCHIANO. The major one at that time.

Mr. HALL [continuing]. That you investigated?

Mr. SCHIANO. Of current interest, yes.

Mr. HALL. Now, you were an employee of the INS at that time?

Mr. SCHIANO. Right.

Mr. HALL. And you had been for how long, since 1950?

Mr. SCHIANO. Well, I started in 1951 and I left in 1960. I returned in 1963 and I left on December 7, 1972.

Mr. HALL. All right. During that period of time, was any effort ever made by INS to pursue the location of alleged Nazi war criminals in the United States?

Mr. SCHIANO. On an organized basis?

Mr. HALL. Yes.

Mr. SCHIANO. Not that I know of.

Mr. HALL. Do you recall whether or not any letters or any correspondence of any kind was submitted to INS by this committee or any prior committee suggesting that such an investigation should commence?

Mr. SCHIANO. No; I became aware of that through Chuck Allen who testified here. And that they had made complaints to the Service about the presence of Nazis in the United States. I was not aware of how widespread the question was or how many there were. I was shocked even when I got the list from Dr. Oscar Karmach that there were many more than we had originally suspected.

We had suspected further publicity in the case, other complaints, and I was frankly a little taken aback at how many there were.

Mr. HALL. Now, where were you stationed during all of that period of time?

Mr. SCHIANO. Mostly in New York. I was on detail in two other districts in specific cases.

Mr. HALL. You were into more or less organized crime and that sort of thing?

Mr. SCHIANO. I was chief trial attorney, but they have used me on some troublesome cases in different areas.

Mr. HALL. When you heard this information from Mr. Allen about the number of alleged Nazi war criminals in the United States, was that this week when this testimony—

Mr. SCHIANO. No; this was after I left the Government, after I think we appeared on the television show, I think it was the Susskind show when I became more closely acquainted with Mr. Allen and talked to him and he made available certain publications.

Mr. HALL. I believe a lot of that information Mr. Allen had and still has dealt with alleged Nazi people who were living in the area around New York City. Is that correct, sir?

Mr. SCHIANO. I think so.

Mr. HALL. All right. Does it appear strange to you that if Mr. Allen knew this information and had this information at his fingertips, is it not strange that the INS did not likewise have this information during that same period of time?

Mr. SCHIANO. I don't know if they did not. Perhaps they did.

Mr. HALL. If they did they were doing nothing about it so far as you knew?

Mr. SCHIANO. So far as I knew.

Mr. HALL. All right, and you would have been one of those people that they would have contacted, I would assume, at some investigative stage of those proceedings.

Mr. SCHIANO. I would like to think so, but not necessarily so. I said I was a trial attorney. I would like to think so, because I think the investigation and prosecution of these cases should be under the auspices of a trial attorney who directs the investigation and marshals the evidence and evaluates what further steps are to be taken.

Mr. HALL. In your investigation of the Ryan case, did you uncover evidence of additional alleged Nazi war criminals who were in the United States?

Mr. SCHIANO. Now, as I said, during the case itself we got phone calls, information, we were almost being deluged and we were not in a position to organize the material. As I said, we were handicapped. We didn't even have enough money for our witnesses. We didn't have enough money to take care of them. There were 14 witnesses, I think, that were mentioned during the denaturalization case investigation which were possibly to be brought over in case they would have to go to trial.

Mr. HALL. During the time this woman was being tried and investigated, you were an arm of the U.S. Government?

Mr. SCHIANO. That is right.

Mr. HALL. And you were shunted to a very small area, as you state in your statement?

Mr. SCHIANO. Technically, I was probably the second highest ranking officer in New York.

Mr. HALL. Does it appear strange to you as to why your office and why your people were shunted into a cubicle there that was of such smallness as you have mentioned here?

Mr. SCHIANO. I cannot claim credit for my people. I didn't have any except Mr. DeVito concerning this case, and my other people were busy working my section. I said I had some 2,000 cases to control as well.

Mr. HALL. Did you not say at one time you had to go across the street to get a phone call?

Mr. SCHIANO. That's right.

Mr. HALL. That seems rather strange to me that you had to climb over each other to get to the desks.

Mr. SCHIANO. That's right.

Mr. HALL. Because you were prosecuting an infamous matter, were you not?

Mr. SCHIANO. I don't know if that was the cause.

Mr. HALL. Have you always had that kind of treatment when you were with the agency, did they always give you on any case you tried, those accommodations?

Mr. SCHIANO. No; most of the times they gave me whatever I wanted.

Mr. HALL. I wonder why the accommodations were so bad during this trial of the investigation of this case?

Mr. SCHIANO. You might have to ask someone else.

Mr. HALL. Do you have any ideas about it?

Mr. SCHIANO. Some, but I do not care to express them now.

Mr. HALL. As you testified here today, sir, and I appreciate your testimony, I am sympathetic with what you say in this report; do you believe that there exists in any of the services that you have had any connection with, whether it be INS or any of the other agencies, any organized effort to slow down the process of trying to investigate these alleged war criminals that still live in the United States?

Mr. SCHIANO. I don't think there is any organized effort. At the same time, I don't believe there was the proper inspiration either.

Mr. HALL. That leaves us in between.

Mr. SCHIANO. That's right.

Mr. HALL. Are you speaking back when you were active with INS or now?

Mr. SCHIANO. Speaking back. Now, I don't know. I would rather believe, hope to believe, that the Service, the Immigration Service, could be commended for its efforts it has taken since this committee has been prodding it.

Mr. HALL. I think the impetus behind everything that has taken place has come from the strong persuasive efforts on the part of the chairman of this subcommittee, Congressman Eilberg, and Congresswoman Holtzman. I think that is what built the fire under a lot of people. And I admire them for doing that.

The thing I would like to ask you, and I don't want to be repetitious, but it appears to me that we are hearing testimony of people who were in places of great importance, and all of these people, without exception, have strong indications in their minds and also they testified that someone, somewhere in the great beyond was pulling or had pulled some strings to slow down, to do everything to prevent and hinder a proper investigation of these people.

Mr. SCHIANO. Well, I think it's like every area of human activity, you feel when there is a gung ho attitude to go ahead and you get the feeling when there is a sort of reluctance, whether it be psychological or otherwise, to afford you the necessary inspiration and leadership to go ahead and push for it, whether it be in military terms or government service, I think it operates the same way.

Mr. HALL. Well, when you had to climb over Mr. DeVito to get to your desk, did you think at that time somebody was not encouraging you to work on that case?

Mr. SCHIANO. I think so.

Mr. HALL. Thank you, sir. I yield back the balance of my time.

Mr. EILBERG. Thank you, Mr. Hall. That was very good.

Mr. SCHIANO, in answer to one of Mr. Hall's questions you said that you didn't think there was a deliberate attempt by INS officials to obstruct the investigation or prosecution of alleged Nazi war criminals.

You did say that?

Mr. SCHIANO. I don't know if those were my words.

Mr. EILBERG. Could you comment on that?

Mr. SCHIANO. You mean that there was a deliberate attempt?

Mr. EILBERG. Yes.

Mr. SCHIANO. I don't know. I can only express my experience in that particular case. I felt less than inspired on it. I felt I was not given the same facilities I was given in other cases.

I had a case in Philadelphia, the name I will not mention, which they asked me to go right ahead, prosecute, no holds barred of a man who was 6½ years in the United States at the age of 61. He was never convicted of a single crime.

I prosecuted hundreds of cases of people who were convicted of petty larceny, and never saw a memorandum by a central office official about punishing the person twice for such an offense by deportation process.

I think it was an untoward attitude taken on this case.

Mr. EILBERG. All right; you have stated a couple of times in the last few minutes that while there was no deliberate attempt to obstruct or impede an investigation or prosecution, nevertheless there was clearly a lack of inspiration as far as your superiors were concerned.

I wonder if you can expand on that?

Mr. SCHIANO. As I said, at that time, in other case of major interest——

Mr. EILBERG. I didn't hear.

Mr. SCHIANO. Other cases of major interest I was told whatever I wanted, I got, if I needed an investigator, if I had to send somebody out to get some document, I got it. To get an investigator in the Ryan case where we were well underway in the case, we had already established certain aspects of the case, and I was without an investigator and I was left without the means of controlling or speaking to witnesses, and I had to run a section.

I was working seven days a week. We have problems with bringing witnesses from overseas. While some 14 witnesses that had originally been earmarked for testimony in the denaturalization case, there was I think information and instructions given to our overseas post to cease and desist locating the very same witnesses to their availability in the deportation case.

We were not given moneys to pay the hotel bill of one of the witnesses. We expended moneys out of our own pockets.

Mr. EILBERG. Mr. Schiano, what motives do you believe prompted these officials to take these actions?

Mr. SCHIANO. I think they got kind of caught in the bind and made mistakes and now they covered up maybe their own ineptitude.

Mr. EILBERG. Caught in a bind and making mistakes in what way?

Mr. SCHIANO. I think they failed to rise to the occasion of prosecuting these cases, they may have closed them out for maybe inauspicious reasons. I don't know, and now they didn't know how to explain them except wish they would go away by never happening.

Mr. EILBERG. Now, why in your opinion would your superiors provide you with all of the facilities necessary in prosecution of other types of cases but not in the connection with prosecuting Nazi war criminals?

Do you have any idea as to their motive?

Mr. SCHIANO. No. I think it's a matter for this committee to pursue and ask these people these questions as to why such attitudes, why such memoranda. I think I was concerned about, which troubled me, Mr. Zutty said, for over 20 years he was able to

review such evidence in the files and determine what happened before. On the contrary, the Attorney General did not share his points of view and it was not possible to determine from the files why certain cases were not investigated.

Apparently there was some void, some lapse, something is missing.

Mr. EILBERG. Are you familiar with any file or any case where an official of the Immigration and Naturalization Service or other agency directed that no further investigation take place into any of these cases?

Mr. SCHIANO. No; we heard about it, Mr. DeVito and I, through the courts. We never substantiated, at least at that time. For instance, now I find it distressing to hear if you interview 60 witnesses on a case that you don't go for the other five witnesses. That to me would not be good investigative technique.

Mr. EILBERG. Are you familiar with cases presently under judicial proceedings, Nazi war criminal cases?

Mr. SCHIANO. Some of them, only generally from the newspapers.

Mr. EILBERG. Have you had the opportunity to observe any of these proceedings personally?

Mr. SCHIANO. No.

Mr. EILBERG. Are you in a position to give us a candid evaluation of the conduct of these proceedings with regard to the Government trial attorneys or the Immigration judges?

Mr. SCHIANO. Well, I think it's unfair to get a trial attorney and place him in a case and say, go ahead, anymore than if one was asked to prosecute a malpractice action against a physician without grounding himself well into medical language, medical procedures, and what not.

I had such an experience at one time; it took me a good, I would say, 3 months to learn about certain anesthetic procedures before I could go ahead with the hearing.

I think if you put a trial attorney in charge of something, you must tell him, he has to orient himself, educate himself as to the background of which he is going to be involved.

For instance, to give you an example, in the *Ryan* case he spoke of toward the end of the War she took some 60 inmates and took them out of the camp with her as if this was some beneficent gesture, and traveled westward away from the on-rushing Russians. Actually, a knowledge of SS laws and procedures would have taken a different attitude, that anyone, any SS office in charge of transporting concentration camp inmates gets priority of transportation and that could very well have been a motive.

Mr. EILBERG. All right. Getting back to the point I was making a moment ago, what is your judgment of the quality of the judges and trial attorneys involved in these cases?

Mr. SCHIANO. I don't know the judges well, I am sure they are competent. The trial attorneys, I don't know. I do know of some of them, excellent people, like Paul Vincent, I have the highest respect for him. I don't know about some of the others. I have not seen them.

Mr. EILBERG. Are you in a position to make any recommendations as to the handling of these cases presently?

Mr. SCHIANO. No; I wish I were involved with them more.

Mr. EILBERG. Turning to the involvement of other U.S. government attorneys in these cases, was total cooperation accorded to INS in its investigations by other agencies, as you had to deal with other agencies?

Mr. SCHIANO. Well, very little, frankly. Everything the experience of the things I had in the instant use, feelings I had in the instant case, that at that time, I think it probably violated our protocol procedures, but I directly communicated with both the German and Polish Governments for evidence and an action for possible extradition, which I felt was a shortcut to final result in the case, where the bottom line would be the prosecution of that person for the crimes which were never tried.

Now, I went to the Embassy, the Polish Embassy in Washington twice, directly. I communicated with the German office in charge of the Nazi war prosecution in Dusseldorf, and a Judge Auerbach, not Oscar Karbach, but Judge Auerbach in Dusseldorf, came over to see me where we discussed the extradition process and requirements and he informed me his government had undertaken extradition.

Mr. EILBERG. Do I understand you had no complaint about cooperation with other governmental agencies?

Mr. SCHIANO. I had little to do with them.

Mr. EILBERG. Were there other agencies who might have withheld information from INS?

Mr. SCHIANO. Well, there was an incident, I don't know, I will correct it, as Tony DeVito advised me of it, we had requested the Polish Government to transmit certain information and documents and material to us that might have been available to us concerning that case. I understand a package had arrived at the State Department and I don't know whether it was transmitted to the Department of Justice, but it was never sent forward to me, but was returned to the Polish Embassy.

We never found out why it was, what it was, or anything at all.

Mr. EILBERG. Mr. Schiano, I believe we have concluded our questioning of you and we want to express our deep appreciation and respect for your coming here and relating your experiences and all that you have gone through. We regard you as a friend.

Mr. SCHIANO. On the contrary, thank you and your committee.

Mr. EILBERG. Thank you very much, and we will recess briefly before we will take the final witness for the day.

[A short recess was taken.]

Mr. EILBERG. The subcommittee will come to order once again.

Mr. Mario de Capua.

Mr. de Capua was formerly Chief, Security and Investigations, Displaced Persons Commission (Europe).

Mr. de Capua, do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. DE CAPUA. I do.

Mr. EILBERG. Mr. de Capua, we welcome you this morning. I do not know whether you have a statement or not.

TESTIMONY OF MR. MARIO DE CAPUA, FORMER CHIEF, SECURITY AND INVESTIGATIONS, DISPLACED PERSONS COMMISSION (EUROPE)

Mr. DE CAPUA. I do not.

Mr. EILBERG. Would you care to make some remarks.

Mr. DE CAPUA. If I may. I would like to preface this session with the observation that I assume your questions will be dealing with my professional life dating back 30 years. I beg your indulgence since my memory is very frail in that period of time and if I can't answer your questions in great detail I beg your forgiveness.

I think I could correlate my memory with that of my receding hairline, so fire away.

Mr. EILBERG. Mr. de Capua, you headed the Security Investigations Division for the Displaced Persons Commission in Europe for the period between 1948 and 1952. Could you describe for the subcommittee the procedures followed by your unit implementing the security provisions of the Displaced Persons Act, particularly section 13 of the amended law which prohibited the issuance of visas to persons who had engaged in persecution?

Mr. DE CAPUA. I will try. With my arrival in Germany in November 1948, in Frankfurt, I was given the job of organizing the Security Investigative Division of the DP Commission by the then Coordinator of the Commission. This meant setting up an investigative arm in the American zone of Germany, the French and British zones of Germany, in Camp Bagnoli outside Naples, Italy.

For this purpose it was necessary for us to seek as much assistance as possible from agencies in those areas that could aid us in that investigation. Thus, for example, in the American zone of Germany we leaned heavily on the Counter Intelligence Corps. Indeed, we had a special liaison officer, if I may mention his name, Major Abraham, who worked with us and was our liaison with the Stuttgart Army Headquarters in setting up the investigative procedures in the American Zone of Germany.

For the British Zone we went to the British Control Commission, which agreed to cooperate with us by putting its intelligence arm at our disposal, that is, using them to provide whatever ground checks we might have requested.

The same thing was also true in the French Zone. Working through the French Surete. In Italy, it was the Questura which agreed to cooperate with us. My memory is a bit shaky as to the exact modalities of what we investigated at the time, but I do recall we made a ground check using these various intelligence services. If, for example a displaced person was located in the British Zone, then the investigation of that DP was sent to our unit in the British Zone for onward dissemination to the British Intelligence Service. In addition, that same DP was checked out through the Berlin Documents Center.

We also made checks through the Counter Intelligence Corps. Any DP was checked whether he lived in the British, French, or whatever zone. We checked the fingerprint files in Heidelberg, if my memory serves me correctly—and I will keep using that phrase—essentially a check for criminal activity.

That, in essence—I might add one other very important thing that we did do at the time. I and colleagues in conjunction with our

legal division—we had a legal section as part of the DP Commission headquarters in Frankfurt—prepared what we called our list of organizations inimical to the United States in compliance with section 13. Section 13 I do not think reads specifically “people who persecuted others,” but I believe it does say admittance to the United States would be denied anyone who was a member of an organization inimical to the United States.

The legislation was I don't believe very clear on that, so we set about to try to identify which organizations we believed were inimical to the United States. Using basically the military automatic arrest category, which was issued to those of us who were in counterintelligence during the war and which we used in apprehending people as we marched across Europe, we included also in that list organizations which we knew had been cooperating with the Nazis in countries such as Hungary, Poland, all of the East European countries.

I cannot begin to try to recall them but there were numerous organizations like the Iron Cross and myriad others.

Mr. EILBERG. Mr. de Capua, we know that in many cases Nazis slipped through by using aliases.

Mr. DE CAPUA. Yes.

Mr. EILBERG. Did your check include fingerprint checks? How much of a check was there?

Mr. DE CAPUA. The check, as I mentioned before, was made at Heidelberg, which was a fingerprint check, if I remember correctly. Those fingerprints were maintained by 7th Army CID. I don't believe—I would say those fingerprint checks did not net us—well, I couldn't make a guess. I don't think they netted us very much in positive identification of any of the type of people you are describing.

Mr. EILBERG. Were the people detained? Were you under pressures to let them go before the checks came back?

Mr. DE CAPUA. There was a period of time when—let me preface my answer by saying that this was a high-charged operation. From the moment we got there, there was pressure particularly from the voluntary agencies to get these people moving. I don't think in saying that the voluntary agencies wanted to aid and abet any war criminals, but they were interested in moving people. There was pressure also from various Members of the Congress who were intervening in behalf of displaced persons at the urging of their constituents.

We also were under pressure of filling ships, we had ships tied up. We had to get them to the dock within a certain period of time, at least we would try to keep the pipeline moving. I think there was a period of time when we had, if you will, a moratorium on the Berlin Document Center. In other words, the BDC check, as we called it. If that check were not in in time, and the displaced persons was otherwise ready to move and got his visa, he was permitted to take the ship with the proviso that the INS would eventually get the results of that check and if it turned up positive, the displaced persons could be returned to Europe.

I might add that INS did not always operate in Europe. We would send the displaced persons all the way to New York and the INS would have to just turn around and send them back.

Mr. EILBERG. How many cases were turned back? Do you have any idea?

Mr. DE CAPUA. No, I have no idea, sir. All I know from my orientation after leaving the commission, we have always—at least all of us prided ourselves on the fact that the percentage of people that turned out bad that got to the States was allegedly one-quarter of 1 percent out of 400,000 people.

Mr. EILBERG. Vice President Barkely was quoted as making the following remarks about the displaced persons screening procedures:

There has never been, in my judgment, in the whole history of the United States, a more careful piece of machinery and inspection than is now in effect in regard to the administration of these displaced persons in the United States.

He went on to say:

I do not know how there would be any better system of investigation by which it could be determined that those who are permitted to come are entitled to come * * *

In view of these glowing expressions, how do you account for the hundreds of alleged Nazi war criminals now in the United States who were admitted under the Displaced Persons Act?

Mr. DE CAPUA. I have been reading newspaper accounts. I have not seen any figure. I am surprised but I would like to point out in my orientation I believe what Vice President Barkley said. I think under the circumstances—and I think we ought to recognize that given the tumult in Europe, the wholesale destruction of documentation, records, ID's, the dislocation of millions of people, it was darned difficult for us to really get a handle on what these people may have done before. As I say, I am not aware of the number of people who may have gotten in who were Nazis, but I would like to point out to this committee that I am not so certain that they came through the Displaced Persons Act. I will be the first to say it was possible because of the circumstances, but I would like to remind the committee there were other avenues for these people to get into the United States. Unless the documentation specifically shows that they came through the Displaced Persons Commission alone, then I have to defer an answer. I say it is possible. You must recall that the Truman directive of 1945 until the DP Commission went into business in 1948 permitted hundreds of so-called German persecutees to come into this country, and I don't believe there was anywhere near the effort we made to clear those people.

Mr. EILBERG. Mr. de Capua, for your own information, of the 12 cases presently under prosecution for denaturalization or deportation, 8 of the 12 came in through the Displaced Persons Act.

Mr. DE CAPUA. In what period of time; do you know that?

Mr. EILBERG. What period of time?

Mr. DE CAPUA. Was that with one particular—was it just in 1952?

Mr. EILBERG. Counsel indicates 1950 and 1951.

Mr. DE CAPUA. As I said before, this is the first I have had a specific figure. As I also stated before, it would not have been entirely impossible because despite our checks there was skulduggery starting with the IRO down through even our visa people. I am sure we could have been dooped on some of these cases.

Mr. EILBERG. Did you ever have any doubts that you were receiving full and complete cooperation from all the Government agencies you were using as sources of information, that is, the FBI, the CIC, the CIA, the INS, as well as foreign intelligence and police services of the British, French and Italians?

Mr. DE CAPUA. Sir, I have no reason to question any of the services. I think we got excellent cooperation. I know of no instance, at least known to me anyway, of any skulduggery on anyone's part. The word conspiracy has been used here. I disown that. I can't accept there was any kind of conspiracy. There may have been ineptitude or just plain skulduggery on the part of the applicant, but I know of no instance where there was any skulduggery on the part of our officials.

Mr. EILBERG. In that respect, in your opinion do you think that perhaps some of these agencies were being less than frank with you and your people?

Mr. DE CAPUA. No, sir.

Mr. EILBERG. I also noted that in addition to checking the Berlin Document Center and the fingerprint record center in Heidelberg, you ran special investigations in connection with displaced persons whose country of origin had been overrun by Communists. First of all, what was the fingerprint record in Heidelberg?

Mr. DE CAPUA. I think I mentioned that, sir. It was run by 7th Army, if I recall correctly, and it was essentially a repository for cases which had been criminally prosecuted or came to the attention of the police for one reason or another but essentially a criminal activity run by the provost marshal, I should say.

Mr. EILBERG. How were these special investigations carried out on persons whose country of origin had been overrun?

Mr. DE CAPUA. My memory is weak on that one. I have to assume, or rather, I think I recall that what we did with cases of this sort was that these people were subjected to interrogation by members of our security staff who had been at onetime nationals of that country. I might add that a large number of the people on the Displaced Persons Commission staff including the security staff had been refugees at one time from Hungary, Poland, Czechoslovakia, and the like. They had been drafted into the Army—they had immigrated to the States before the war or just in the early part of the war, and became members of the U.S. Army, citizens as a result of their service, and when they were getting ready to leave the U.S. forces in Europe we hired many of them by virtue of their knowledge of the country, whether Poland, Hungary, and the language knowledge which we needed badly in the interrogation.

To answer your question, the special investigations, if I recall correctly, were conducted by these security investigators who had knowledge of the political hierarchy in the country, knew the geography of the country and could check the bona fides of the displaced person applicant. It was the best way of catching him in lies by posing the right kind of questions by someone who was conversant with the country.

Mr. EILBERG. What role did the international refugee organizations play in setting eligibility standards and in the investigative process of these displaced persons?

Mr. DE CAPUA. I would like to almost decline to answer that because I really don't know the answer to that. This is a question that the coordinator of the Displaced Persons Commission can answer better for you some day. I can't believe it could have been much of a screening because, as I think the first witness mentioned, these people appeared in displaced persons camps and alleged to be displaced persons. I think they came practically—well, in a lot of cases without any documentation whatsoever. I don't see how the IRO could have conducted a thorough investigation, and I am not certain that they did. I think many times they were accepted at face value. I am not certain of that. I want to be careful on that. I think so. They made an attempt to document this. How successful they were I don't know. I think the onus for determining whether these people were bona fide was essentially the Displaced Persons Commission in its screening procedures.

Mr. EILBERG. The Soviet Union was a member of the International Refugee organization and their attitude on Nazi war criminals was well known. My question is, was any attempt made to establish a liaison with Soviet officials to check out persons who may have been involved in war crimes?

Mr. DE CAPUA. Mr. Chairman, I can't recall that any effort was made; whether it was a lack of interest by the Commission, I am not prepared to say at this point.

I am inclined to believe, however if it did occur to the so-called management of the Displaced Persons Commission, if you will, it probably was discarded as being useless, since I think if you recall the dates of the Displaced Persons Commission, 1948 to 1952, we are talking essentially about the beginning of the cold war and any attempt to get cooperation I think would have been one, useless, even though it may have involved war criminals.

Even had they cooperated, I think the procedure would have been so drawn out, that is the product or what we would have gotten from them, that the Displaced Persons Act would have been over by the time we got any kind of response from them.

Mr. EILBERG. How?

Mr. DE CAPUA. I am sorry, I can't give you any more on that.

Mr. EILBERG. What is your reaction to the fact that the Soviets apparently are willing to cooperate at the present time?

Mr. DE CAPUA. I find that very positive, sir; I think it's a positive development.

Mr. EILBERG. But times have changed.

Mr. DE CAPUA. I would say times have changed. As I say, when we are talking about displaced persons and refugees, I think we should never forget what a different world that was in 1948, not only politically but just the whole picture of Europe was in turmoil and if you were there, sir, as I was, and I think a number of or a member of your staff was, you recall what we were up against in trying to do the job we had to do.

Mr. EILBERG. Now, there has been reference to this before, but I would like to go into it a little further. I understand that at a certain point in the displaced persons program pressures from the voluntary agencies prompted you to adopt a policy of calculated risk, in other words, if the investigation was not complete, the

person was approved on the basis of taking the calculated risk that that applicant would qualify.

Can you tell me more about that, and is it possible that a number of these persons presently under investigation may have entered because of this policy?

Mr. DE CAPUA. I recall very faintly the expression "calculated risk." I think it was first used in testimony by one of the Commissioners of the Displaced Persons Commission. It was something that cause some merriment abroad. I recall that much.

It was essentially where the moratorium on the BDC check, in other words, because of the length of time it was taking to get these results in and because we had to fill boats and because we were being prodded by the voluntary agencies, it was decided by management, I believe Washington management, that we would, and I can say with the concurrence of the European coordinator, that we would let the displaced persons go, processed displaced persons go to the States and be sent back by the INS if eventually the BDC check proved positive.

I think the onus was on the INS to go looking for them, and I dare say the voluntary agency would have to come up with the individual.

Mr. EILBERG. We noted that one of the procedures used by the Displaced Persons Commission was to send to the consuls, and INS the complete original CIC report on the applicants. We can conclude from that that INS would have in its file the original CIC report on all persons past and present under investigation by INS based on allegations of participation in Nazi war crimes who came into the United States under the Displaced Persons Act. Is that correct, or were there exceptions made?

Mr. DE CAPUA. The question I believe is the original CIC report would be a part of the INS file even today.

Mr. EILBERG. Yes.

Mr. DE CAPUA. To the best of my orientation, I would say yes, it would have to be.

Mr. EILBERG. Were there exceptions made?

Mr. DE CAPUA. I am not aware of any, sir.

Mr. EILBERG. The amended act in 1950 gave authority to the consuls and Immigration inspectors to review the eligibility determinations of the Commission and IRO's decision on IRO's status. Can you explain why Congress saw fit to impose this requirement?

Mr. DE CAPUA. I am sorry, sir, I didn't get the question.

Mr. EILBERG. The amended act in 1950 gave authority to the consuls and Immigration inspectors to review the eligibility determinations of the Commission and IRO's decision on IRO status. Can you explain why Congress saw fit to impose this requirement?

Mr. DE CAPUA. I am afraid I have to pass, sir. I can't answer that in all honesty.

Mr. EILBERG. Do you have any idea what effect this new measure had on providing better screening on individuals seeking to enter the United States?

Mr. DE CAPUA. Again, I don't know the answer to that. My own reaction to that is no, I don't think it would have made any difference, because I think the people that we had doing the same job were much better equipped, both languagewise and knowledge

of the country from which the displaced persons came to be able to detect whether that applicant was indeed, let's say a person who would be inadmissible to the States and others, in order to be able to detect his let's say his past activities.

Mr. EILBERG. Did not the U.S. Army have at that time a war crimes unit within the command?

Mr. DE CAPUA. Yes, I believe so.

Mr. EILBERG. What use was made of the records of this unit?

Mr. DE CAPUA. Presumably, the CIC check or to the best of my orientation the counterintelligence automatically made use of the war crimes documentation.

Mr. EILBERG. The final report of the Displaced Persons Commission contained the following statement:

The thoroughness of the screening was reflected by the fact that of the 220,360 displaced persons admitted to the United States by January 31, 1951, not a single person had to be deported for reasons of the security. This same record, in fact, prevailed to the very end of the program.

In your opinion, would persons guilty of persecution of any individual because of race, religion, or national origin be included in the security reasons mentioned in the report?

Mr. DE CAPUA. You mean would they have been included?

Mr. EILBERG. Yes.

Mr. DE CAPUA. I would say yes, they should have been, yes. In other words, if, indeed, someone, it was turned up that a person would have been guilty of persecution or war crimes and subsequently discovered, then that statement is obviously wrong.

That conclusion on the report is wrong.

Mr. EILBERG. And would you say at that point that that statement might be open to question as far as the admission of persons who should have been deported even though no deportations were effected? In other words, we know many Nazis entered the United States, but this report evidently was inaccurate.

Mr. DE CAPUA. Sir, we had an official, yes, I will say yes, in the affirmative, to that question, but I would like to remind the committee here that we had an official program, for example, called Operation Paperclip in which we went over and picked up engineers and scientists with common Nazi backgrounds and sympathies and worked in this country for years, and I am not excusing anybody that came under the Displaced Persons Act, but I am saying that we did have other programs in which we did bring in these people with these past memberships so Nazi membership per se was I don't think ever viewed in other programs with as much, let's say, disdain, or official disdain, as we did under the Displaced Persons Act.

It was an automatic exclusion in the Displaced Persons Act.

Mr. EILBERG. Were displaced persons from Latvia, Estonia, Lithuania and the Ukraine and other countries screened as assiduously as other displaced persons?

Mr. DE CAPUA. I would say yes, with the proviso, of course, or the caveat that we couldn't or we didn't get anything from the countries from which they emigrated. Records or checks on these people were based or limited solely to their, wherever we could check their movements, since they had come out of those countries. In other words, any area we could check, we tried to check.

Mr. EILBERG. Can you tell us something about the precautions taken against fraudulent or forged documents?

Mr. DE CAPUA. I can't recall any that were taken, sir. I don't remember anything specifically.

Mr. EILBERG. Would you support the reports from the Department of Justice that only one-twentieth of 1 percent, that is 60 of the first 120,000 displaced persons admitted were of questionable background?

Mr. DE CAPUA. I have nothing at hand or any empirical experience that would suggest anything else but that conclusion. Let me say I don't know, sir.

Mr. EILBERG. During yesterday's hearing, Mr. Almanza Tripp, head of the INS unit in Europe assigned to the Displaced Persons Act cited numerous instances in which cases determined to be eligible for admission under the act by the Displaced Persons Commission were turned back by INS for redetermination.

Mr. Tripp further stated that a good portion of those cases received adverse determinations upon reexamination.

Can you comment on this?

Mr. DE CAPUA. Did he specify, sir, that adverse determinations were for security reasons or is he talking about the whole bag, including medical reasons, because if he is including the latter, then there were a lot turned down; that is, there was a lot of need for redeterminations. But I think he would have to separate for you what he is talking about.

If he is talking about security risks then I think the number that were turned around might have been miniscule. If you are talking about the health and moral turpitude, then you have a bigger bag to talk about.

Mr. EILBERG. Mr. Tripp also stated in most cases of applicants under the Displaced Persons Act no personal interrogations were conducted prior to the INS stage in the screening process; is that accurate?

Mr. DE CAPUA. No; I don't believe it is, sir.

Mr. EILBERG. What did happen?

Mr. DE CAPUA. Well, as I mentioned, where we had on our staff a large number of people stationed in Hamburg, Schweinfurt, and Butzbach in Germany and in Bagnoli, and in Baden-Baden and people who were largely qualified and knowledgeable of an area, who could question cases, as particularly where we had any indication such as a denunciation or information from CIC or from the Berlin Document Center that indicated that this fellow might be a questionable applicant, these people were subjected to interrogation by our staff.

Mr. Tripp is wrong there.

Mr. EILBERG. Did you at any time during your tenure as head of security perceive any pressure being put on your unit by any other unit of the Commission or other Federal agencies to process cases quickly at the expense of conducting a thorough background investigation.

Mr. DE CAPUA. As I say, this was a high pressure organization. We were out to get a job done. There was pressure by any number of people, voluntary agencies. We had the typical or usual congress-

sional correspondence, but I cannot point my finger and say that one was any worse than the other.

I want to make the point here that I don't think it caused us, except in the instance we mentioned, we talked before, that we shortchanged anybody with a security investigation except for that BDC check, where they had the interim, where we were letting them go without the BDC check.

Mr. EILBERG. Mr. de Capua, we thank you.

Mr. Cook?

Mr. COOK. Thank you, Mr. Chairman.

Just one question: On situations where you waived the BDC check and allowed the applicant to proceed to the United States, do you know how many of those persons subsequently were returned to their home countries or returned, were removed from the United States because of a negative BDC check?

Mr. DE CAPUA. I don't know, but I am willing to guess that it was an infinitesimal number.

Mr. COOK. Do you know of any?

Mr. DE CAPUA. I couldn't identify one. But I am almost certain there were some which were brought back. Now, in my view, the BDC check, the Nazis had a very excellent organization information organization, probably the best tool that we inherited from the Nazis was the Berlin Document Center.

It did a very good job of identifying people who were in specific military, paramilitary, and political organizations, the Nazi Party, Fravenenschaft, Bund Deutscher Maedchen and so forth. It was also excellent in that it identified for us Americans who voluntarily came back to Germany from the United States and were writing letters to the Fuhrer, the Rueckwanderer Zentrale. But what it didn't do, if my memory serves me correctly, was identify in too many instances those people whom the first witness identified or rather mentioned, those people who worked voluntarily for the Nazis throughout the Reich at the time. Whether it was as CAPO in Dachau, or whether it was somebody that was working as a guard or what have you, or volunteers, some of them who volunteered to work in Germany and collaborated with the Germans, it didn't do that job.

That is the sort of information we had to develop through CIC sources, many of the sources were from—

Mr. COOK. Is that the only check that was ever waived under your procedure?

Mr. DE CAPUA. That is as far as I am concerned.

Mr. COOK. Thank you, Mr. Chairman.

Mr. EILBERG. We have had 3 days of rather extensive hearings on the question of alleged Nazi war criminals.

I believe that most of the witnesses have been sincere in their testimony and for that and their appearance, we wish to thank them.

The preliminary conclusions I can draw from these hearings are: One, it is obvious to me that we have only really scratched the surface of this problem. The efforts we have made since 1973 will have to be considerably reinforced.

It is my intention to press the Special Litigation Unit to be more aggressive in pursuing their investigations and their prosecutions.

I can assure you that we will continue to exercise close and continuing oversight over the activities of that unit. We will follow each case with the utmost of care.

Two, it is also obvious to me that the involvement of U.S. Government agencies was more extensive than we originally were led to believe.

We will follow this aspect of the investigations with diligence in an effort to get to the bottom of this situation. We will press INS to continue its exploration of these agency files in the development of their investigations and prosecutions.

Our subcommittee will continue to make its own independent investigation of all aspects of this problem.

Three, I am more convinced than ever that we must bring before this subcommittee representatives of these agencies so that we can hear directly from them about their actions, their motives, and their rationale for using alleged Nazi war criminals.

I am sure that the hearings have given us a more firm background on what happened in the past so that we can go on from here to resolve this question over and over for all.

With that, the hearing is adjourned.

[Whereupon, at 12:50 p.m., the Subcommittee on Immigration, Citizenship, and International Law adjourned.]

APPENDIXES

APPENDIX 1

DISPLACED PERSONS ACT OF 1948

See Legislative History, p. 2028

CHAPTER 647—PUBLIC LAW 774

[S. 2242]

AN ACT To authorize for a limited period of time the admission into the United States of certain European displaced persons for permanent residence, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the Displaced Persons Act of 1948.

Sec. 2. When used in this Act the term—

(a) "Commission" means the Displaced Persons Commission created pursuant to this Act;

(b) "Displaced person" means any displaced person or refugee as defined in Annex I of the Constitution of the International Refugee Organization and who is the concern of the International Refugee Organization.

(c) "Eligible displaced person" means a displaced person as defined in subsection (b) above, (1) who on or after September 1, 1939, and on or before December 22, 1945, entered Germany, Austria, or Italy and who on January 1, 1948, was in Italy or the American sector, the British sector, or the French sector of either Berlin or Vienna or the American zone, the British zone, or the French zone of either Germany or Austria; or a person who, having resided in Germany or Austria, was a victim of persecution by the Nazi government and was detained in, or was obliged to flee from such persecution and was subsequently returned to, one of these countries as a result of enemy action, or of war circumstances, and on January 1, 1948, had not been firmly resettled therein, and (2) who is qualified under the immigration laws of the United States for admission into the United States for permanent residence, and (3) for whom assurances in accordance with the regulations of the Commission have been given that such person, if admitted into the United States, will be suitably employed without displacing some other person from employment and that such person, and the members of such person's family who shall accompany such person and who propose to live with such person, shall not become public charges and will have safe and sanitary housing without displacing some other person from such housing. The spouse and unmarried dependent child or children under twenty-one years of age of such an eligible displaced person shall, if otherwise qualified for admission into the United States for permanent residence, also be deemed eligible displaced persons.

(d) "Eligible displaced person" shall also mean a native of Czechoslovakia who has fled as a direct result of persecution or fear of persecution from that country since January 1, 1948, and (1) who is on the effective date of this Act in Italy or the American sector, the British sector, or the French sector of either Berlin or Vienna, or the American zone, the British zone, or the French zone of either Germany or Austria, and (2) who is qualified under the immigration laws of the United States for admission into the United States for permanent residence, and (3) for whom assurances in accordance with the regulations of the Commission have been given that such person, if admitted into the United States, will be suitably employed without displacing some other person from employment and that such person, and the members of such person's family who shall accompany such person and who propose to live with such person, shall not become public charges and will have safe and sanitary housing without displacing some other person from such housing. The spouse and unmarried dependent child or children under twenty-one years of age of

such an eligible displaced person shall, if otherwise qualified for admission into the United States for permanent residence, also be deemed eligible displaced persons.

(e) "Eligible displaced orphan" means a displaced person (1) who is under the age of sixteen years, and (2) who is qualified under the immigration laws of the United States for admission into the United States for permanent residence, and (3) who is an orphan because of the death or disappearance of both parents, and (4) who, on or before the effective date of this Act, was in Italy or in the American sector, the British sector, or the French sector of either Berlin or Vienna or the American zone, the British zone, or the French zone of either Germany or Austria, and (5) for whom satisfactory assurances in accordance with the regulations of the commission have been given that such person, if admitted into the United States, will be cared for properly.

Sec. 3. (a) During the two fiscal years following the passage of this Act a number of immigration visas not to exceed two hundred and two thousand may be issued without regard to quota limitations for those years to eligible displaced persons as quota immigrants, as provided in subsection (b) of this section. *Provided*, That not less than 40 per centum of the visas issued pursuant to this Act shall be available exclusively to eligible displaced persons whose place of origin or country of nationality has been de facto annexed by a foreign power: *Provided further*, That not more than two thousand visas shall be issued to eligible displaced persons as defined in subsection (d) of section 2 of this Act.

(b) Upon the issuance of an immigration visa to any eligible displaced person as provided for in this Act, the consular officer shall use a quota number from the immigration quota of the country of the alien's nationality as defined in section 12 of the Act of May 26, 1924 (U.S.C., title 8, sec. 212),¹ for the fiscal year then current at the time or, if no such quota number is available for said fiscal year, in that event for the first succeeding fiscal year in which a quota number is available: *Provided*, That not more than 50 per centum of any quota shall be so used in any fiscal year: *Provided further*, That eligible displaced orphans may be issued special nonquota immigration visas, except that the number of such special nonquota immigration visas shall not exceed three thousand.

Sec. 4. (a) Any alien who (1) entered the United States prior to April 1, 1948, and (2) is otherwise admissible under the immigration laws, and (3) is a displaced person residing in the United States as defined in this section may apply to the Attorney General for an adjustment of his immigration status. If the Attorney General shall, upon consideration of all the facts and circumstances of the case, determine that such alien is qualified under the provisions of this section, the Attorney General shall report to the Congress all of the pertinent facts in the case. If during the session of the Congress at which a case is reported, or prior to the end of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution stating in substance that it favors the granting of the status of permanent residence to such alien the Attorney General is authorized, upon receipt of a fee of \$18.00, which shall be deposited in the Treasury of the United States to the account of miscellaneous receipts, to record the admission of the alien for permanent residence as of the date of the alien's last entry into the United States. If prior to the end of the session of the Congress next following the session at which a case is reported, the Congress does not pass such resolution, the Attorney General shall thereupon deport such alien in the manner provided by law: *Provided*, That the number of displaced persons who shall be granted the status of permanent residence pursuant to this section shall not exceed 15,000. Upon the grant of status of permanent residence to such alien as provided for in this section, the Secretary of State shall, if the alien was a quota immigrant at the time of entry, reduce by one the immigration quota of the country of the alien's nationality as defined in Section 12 of the Immigration Act of May 26, 1924, for the fiscal year then current or the next succeeding fiscal year in which a quota number is available, but not more than 50 per centum of any quota shall be used for this purpose in any given fiscal year: *Provided further*, That quota deductions provided for in this section shall be made within the 50 per centum limitations contained in section 3(b) of this Act.

(b) When used in this section the term "Displaced Person residing in the United States" means a person who establishes that he lawfully entered the United States as a non-immigrant under section 3 or as a nonquota immigrant student under subdivision (e) of Section 4 of the Immigration Act of May 26, 1924, as amended,² and that he is a person displaced from the country of his birth, or nationality, or of his last residence as a result of events subsequent to the out-break of World War II;

¹ 8 U.S.C.A. § 212.

² 8 U.S.C.A. § 204(e).

and that he cannot return to any of such countries because of persecution or fear of persecution on account of race, religion or political opinions.

Sec. 5. Quota nationality for the purposes of this Act shall be determined in accordance with provisions of Section 12 of the Immigration Act of 1924 (43 Stat. 160-161; 8 U.S.C. 212^{*} and no eligible displaced person shall be issued an immigration visa if he is known or believed by the consular officer to be subject to exclusion from the United States under any provision of the immigration laws, with the exception of the contract labor clause of section 3 of the Immigration Act of February 5, 1917, as amended (39 Stat. 875-878; 8 U.S.C. 136),^{*} and that part of the said Act which excludes from the United States persons whose ticket or passage is paid by another or by any corporation, association, society, municipality, or foreign government, either directly or indirectly; and all eligible displaced persons and eligible displaced orphans shall be exempt from paying visa fees and head taxes.

Sec. 6. The preferences provided within the quotas by Section 6 of the Immigration Act of 1924 (43 Stat. 155-156; 47 Stat. 656; 45 Stat. 1009; 8 U.S.C. 206),^{*} shall not be applicable in the case of any eligible displaced person receiving an immigration visa under this Act, but in lieu of such preferences the following preferences, without priority in time of issuance of visas as between such preferences, shall be granted to eligible displaced persons and their family dependents who are the spouse or the unmarried dependent child or children under twenty-one years of age, in the consideration of visa applications:

(a) First. Eligible displaced persons who have been previously engaged in agricultural pursuits and who will be employed in the United States in agricultural pursuits: *Provided*, That not less than 30 per centum of the visas issued pursuant to this Act shall be made available exclusively to such persons; and *Provided further*, That the wife, and unmarried dependent child or children under twenty-one years of age, of such persons may, in accordance with the regulations of the Commission, be deemed to be of that class of persons who have been previously engaged in agricultural pursuits and who will be employed in the United States in agricultural pursuits.

(b) Second. Eligible displaced persons who are household, construction, clothing, and garment workers, and other workers needed in the locality in the United States in which such persons propose to reside; or eligible displaced persons possessing special educational, scientific, technological or professional qualifications.

(c) Third. Eligible displaced persons who are the blood relatives of citizens or lawfully admitted alien residents of the United States, such relationship in either case being within the third degree of consanguinity computed according to the rules of the common law.

Sec. 7. Within the preferences provided in section 6, priority in the issuance of visas shall be given first to eligible displaced persons who during World War II bore arms against the enemies of the United States and are unable or unwilling to return to the countries of which they are nationals because of persecution or fear of persecution on account of race, religion or political opinions and second, to eligible displaced persons who, on January 1, 1948, were located in displaced persons camps and centers, but in exceptional cases visas may be issued to those eligible displaced persons located outside of displaced persons camps and centers upon a showing, in accordance with the regulations of the Commission, of special circumstances which would justify such issuance.

Sec. 8. There is hereby created a Commission to be known as the Displaced Persons Commission, consisting of three members to be appointed by the President, by and with the advice and consent of the Senate, for a term ending June 30, 1951, and one member of the Commission shall be designated by him as chairman. Each member of the Commission shall receive a salary at the rate of \$10,000 per annum. There are hereby authorized to be appropriated such sums of money as may be necessary to enable the Commission to discharge its duties. Within the limits of such funds as may be appropriated to the Commission or as may be allocated to it by the President, the Commission may employ necessary personnel without regard to the Civil Service laws or the Classification Act of 1923, as amended,^{**} and make provisions for necessary supplies, facilities, and services to carry out the provisions and accomplish the purposes of this Act. It shall be the duty of the Commission to formulate and issue regulations, necessary under the provisions of this Act, and in compliance therewith, for the admission into the United States of eligible displaced orphans and eligible displaced persons. The Commission shall formulate and issue

^{*} 8 U.S.C. § 212.

^{*} 8 U.S.C. § 136.

^{*} 8 U.S.C. § 206.

^{**} 5 U.S.C. §§ 661-674.

regulations for the purpose of obtaining the most general distribution and settlement of persons admitted under this Act throughout the United States and their Territories and possessions. It shall also be the duty of the Commission to report on February 1, 1949, and semiannually thereafter to the President and to the Congress on the situation regarding eligible displaced orphans, eligible displaced persons and displaced persons. Such report shall also include information respecting employment conditions and the housing situation in this country, the place and type of employment, and the residence of eligible displaced orphans and eligible displaced persons who have been admitted into the United States pursuant to the provisions of this Act. At the end of its term the Commission shall make a final report to the President and to the Congress.

Sec. 9. Every eligible displaced person, except an eligible displaced person who shall have derived his status because of being the spouse or an unmarried dependent child under twenty-one years of age of an eligible displaced person, who shall be admitted into the United States shall report, on the 1st day of January and on the 1st day of July of each year until he shall have made four reports to the Commission, respecting the employment, place of employment, and residence of such person and the members of such person's family and shall furnish such other information in connection with said employment and residence as the Commission shall by regulation prescribe: *Provided*, That if such person enters the United States within sixty days prior to either the 1st day of January or the 1st day of July, the first report need not be made until the next date on which a report is required to be made. Such report shall be made to the Commission during its term and thereafter to the Attorney General. Any person who willfully violates the provisions of this section shall, upon conviction thereof, be fined not to exceed \$500, or be imprisoned not more than six months.

Sec. 10. No eligible displaced person shall be admitted into the United States unless there shall have first been a thorough investigation and written report made and prepared by such agency of the Government of the United States as the President shall designate, regarding such person's character, history, and eligibility under this Act. The burden of proof shall be upon the person who seeks to establish his eligibility under this Act. Any person who shall willfully make a misrepresentation for the purpose of gaining admission into the United States as an eligible displaced person shall thereafter not be admissible into the United States. No eligible displaced orphan or eligible displaced person shall be admitted into the United States under the provisions of this Act except in pursuance of the regulations of the Commission, but, except as otherwise expressly provided in this Act, the administration of this Act, under the provisions of this Act and the regulations of the Commission as herein provided, shall be by the officials who administer the other immigration laws of the United States. Except as otherwise authorized in this Act, all immigration laws, including deportation laws, shall be applicable to eligible displaced orphans and eligible displaced persons who apply to be or who are admitted into the United States pursuant to this Act.

Sec. 11. After June 30, 1948, no preference or priority shall be given to any person because of his status as a displaced person, or his status as an eligible displaced person, in the issuance of visas under the other immigration laws of the United States.

Sec. 12. The Secretary of State is hereby authorized and directed to immediately resume general consular activities in Germany and Austria to the end that the German and Austrian quotas shall be available for applicants for immigration visas pursuant to the immigration laws. From and after June 30, 1948 and until July 1, 1950, notwithstanding the provisions of section 12 of the Immigration Act of May 26, 1924, as amended,* 50 per centum of the German and Austrian quotas shall be available exclusively to persons of German ethnic origin who were born in Poland, Czechoslovakia, Hungary, Romania or Yugoslavia and who, on the effective date of this Act reside in Germany or Austria.

Sec. 13. No visas shall be issued under the provisions of this Act to any person who is or has been a member of, or participated in, any movement which is or has been hostile to the United States or the form of the government of the United States.

Sec. 14. Any person or persons who knowingly violate or conspire to violate any provision of this Act, except section 9, shall be guilty of a felony, and conviction thereof shall be fined not less than \$500 nor more than \$10,000, or shall be imprisoned not less than two or more than ten years, or both.

Approved June 25, 1948.

* 8 U.S.C.A. § 212.

81st Cong., 2d sess.—Ch. 262—June 16, 1950

AN ACT To amend the Displaced Persons Act of 1948

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 2 of the Displaced Persons Act of 1948 (Public Law 774, Eightieth Congress) is amended to read:

"(c) 'Eligible displaced person' means a displaced person as defined in subsection (b) above (1) who on or after September 1, 1939, and on or before January 1, 1949, entered Germany, Austria, or Italy, and who on January 1, 1949, was in Italy or the American sector, the British sector, or the French sector of either Berlin or Vienna, or in the American zone, the British zone, or the French zone of either Germany or Austria, or who had temporarily absented himself therefrom for reasons which, in accordance with regulations to be promulgated by the Commission, show special circumstances justifying such absence, and who has not been firmly resettled; or a person who, having resided in Germany or Austria, was a victim of persecution by the Nazi government and was detained in, or was obliged to flee from such persecution and subsequently returned to, one of these countries, and who has not been firmly resettled; and (2) who is qualified under the immigration laws of the United States for admission into the United States for permanent residence; and (3) for whom assurances in accordance with the regulations of the Commission have been given by a citizen or citizens of the United States that such person, if admitted into the United States, will be suitably employed without displacing some other person from employment and that such person, and the members of such person's family who shall accompany such person and who propose to live with such person, shall not become public charges and will have housing without displacing some other person from such housing. The spouse and unmarried dependent child or children under twenty-one years of age, including adopted children and stepchildren of such an eligible displaced person, shall, if otherwise qualified for admission into the United States for permanent residence, also be deemed eligible displaced persons."

Sec. 2. Subsection (d) of section 2 of the Displaced Persons Act of 1948 is amended to read:

"(d) 'Eligible displaced person' shall also mean a person displaced from the country of his birth, or nationality, or of his last residence since January 1, 1946, who fled into Italy or the American sector, the British sector, or the French sector of either Berlin or Vienna, or the American zone, the British zone, or the French zone of either Germany or Austria; and cannot return to any of such countries because of persecution or fear of persecution on account of race, religion, or political opinions; and (1) whose admission into the United States for permanent residence is recommended by or on behalf of the Secretary of State and the Secretary of Defense, and (2) who is qualified under the immigration laws of the United States for admission into the United States for permanent residence; and (3) for whom assurances in accordance with the regulations of the Commission have been given by a citizen or citizens of the United States that such person, if admitted into the United States, will be suitably employed without displacing some other person from employment and that such person, and the members of such person's family who shall accompany such person and who propose to live with such person, shall not become public charges and will have housing without displacing some other person from such housing. The spouse and unmarried dependent child or children under twenty-one years of age, including adopted children and stepchildren of such an eligible displaced person, shall, if otherwise qualified for admission into the United States for permanent residence, also be deemed eligible displaced persons: *Provided*, That a number of immigration visas not to exceed five hundred may be issued within the total numerical limitations provided by section 3(a) of this Act, as amended, to eligible displaced persons as defined in this subsection."

Sec. 3. Subsection (e) of section 2 of the Displaced Persons Act of 1948 is amended to read as follows, and new subsections (f) and (g) are added to read as follows:

"(e) 'Eligible displaced orphan' means a displaced person (1) who was sixteen years of age or under on June 25, 1948, and (2) who is qualified under the immigration laws of the United States for admission into the United States for permanent residence, and (3) who is an orphan because of the death or disappearance of both parents, or who has been abandoned, or deserted by, or separated, or lost from both parents, or who has only one parent due to the death or disappearance of his other parent and the remaining parent is incapable of providing care for such displaced person and agrees to release him for immigration or adoption or guardianship and (4) who on or before the effective date of this Act, as amended, was in Italy or in the

American sector or the British sector or the French sector of either Berlin or Vienna or the American zone or the British zone or the French zone of either Germany or Austria, and (5) for whom satisfactory assurances in accordance with the regulations of the Commission have been given by a citizen or citizens of the United States that such person, if admitted into the United States will be cared for properly; an 'eligible displaced orphan' also means a person who is a native of Greece who on or after January 1, 1940, and on or before January 1, 1949, was forcibly removed or forced to flee from his former habitual residence in Greece as a direct result of military operations in Greece by the Nazi government or by military operations in Greece by the Communist guerrillas, and on January 1, 1950, resided in Greece and meets the qualifications of subdivisions (1), (2), (3), and (5) of this subsection.

"(f) A special nonquota immigration visa may be issued to any alien who—

"(1) prior to June 30, 1950, was a resident of Germany, Luxemburg, Austria, Italy, the United States-United Kingdom zone of the Free Territory of Trieste, the United Kingdom, Ireland, Portugal, France, Switzerland, Belgium, the Netherlands, Norway, Sweden, Denmark, Finland, Greece, Turkey;

"(2) is an orphan because of the death or disappearance of both parents, or because of abandonment or desertion by, or separation or loss from, both parents, or who has only one parent due to the death or disappearance of, abandonment or desertion by, or separation or loss from the other parent and the remaining parent is incapable of providing care for such orphan and agrees to release him for emigration and adoption or guardianship;

"(3) prior to June 30, 1951, has assurances submitted in his behalf for admission to the United States for permanent residence with a father or mother by adoption, or for permanent residence with a near relative or with a person who is a citizen of the United States or an alien admitted to the United States for permanent residence, or is seeking to enter the United States to come to a public or private agency approved by the Commission, and such relative, person, or agency gives assurances, satisfactory to the Commission that adoption or guardianship proceedings will be initiated with respect to such alien;

"(4) for whom satisfactory assurances in accordance with the regulations of the Commission have been given that such alien, if admitted into the United States, will be cared for properly; and

"(5) is, at the time of issuance of a visa, under the age of ten years. Not to exceed five thousand such special nonquota immigration visas shall be issued until July 1, 1952, under the authority of this subsection, which number shall be in addition to the numbers authorized in section 3(a) of this Act, as amended.

"(g) An eligible displaced person shall also mean a person who was a resident of Venezia Giulia prior to May 6, 1945, and who on or after May 6, 1945, departed from those parts of Venezia Giulia placed under Yugoslav sovereignty or administration under the terms of the treaty of peace with Italy signed at Paris on February 10, 1947, and who on the effective date of this Act, as amended, is not 'de jure' an Italian citizen, and who on July 1, 1947, was in Italy, or in the United States-United Kingdom zone of the Free Territory of Trieste or in the American sector, the British sector, or the French sector of either Berlin or Vienna, or in the American zone, the British zone, or the French zone of either Germany or Austria; and (2) who is qualified under the immigration laws of the United States for admission into the United States for permanent residence; and (3) for whom assurances in accordance with the regulations of the Commission have been given by a citizen or citizens of the United States that such person, if admitted into the United States, will be suitably employed without displacing some other person from employment and that such person, and the members of such person's family who shall accompany such person and who propose to live with such person, shall not become public charges and will have housing without displacing some other person from such housing. The spouse and unmarried dependent child or children under twenty-one years of age, including adopted children and stepchildren of such an eligible displaced person, shall, if otherwise qualified for admission into the United States for permanent residence, also be deemed eligible displaced persons: *Provided*, That a number of immigration visas not to exceed two thousand may be issued within the total numerical limitations provided by section 3(a) of this Act, as amended, to eligible displaced persons as defined in this subsection."

Sec. 4. Section 3 of the Displaced Persons Act of 1948 is amended to read:

"Sec. 3. (a) During the three fiscal years beginning July 1, 1948, eligible displaced persons and eligible displaced orphans and persons defined in subdivisions (2), (3), and (4) of subsection (b) of this section seeking to enter the United States as immigrants may be issued immigration visas without regard to quota limitations for

those years as provided by subsection (c) of this section: *Provided*, That not more than three hundred forty-one thousand such visas shall be issued under this Act, as amended, including such visas heretofore issued under the Displaced Persons Act of 1948; and it shall be the duty of the Secretary of State to procure the cooperation of other nations, particularly the members of the International Refugee Organization, in the solution of the displaced persons problem by their accepting for resettlement a relative number of displaced persons, and to expedite the closing of the camps and terminate the emergency.

"(b) (1) A number of special nonquota immigration visas not to exceed five thousand may be issued within the total numerical limitations provided by subsection (a) of this section to eligible displaced orphans.

"(2) A number of immigration visas not to exceed four thousand may be issued within the total numerical limitations provided by subsection (a) of this section to displaced persons or refugees as defined in annex I (except paragraph 1(b) of section A of part I thereof) of the constitution of the International Refugee Organization who (1) resided in China, as displaced persons, or refugees, on July 1, 1948, or on the effective date of this Act, as amended, and (2) are qualified under the immigration laws of the United States for admission into the United States for permanent residence, and (3) are still in China or, having left China, have not subsequently been received for permanent residence by any country other than the United States.

"(3) A number of immigration visas not to exceed eighteen thousand may be issued within the total numerical limitations provided by subsection (a) of this section to persons who (1) during World War II were members of the armed forces of the Republic of Poland, (2) were honorably discharged from such forces, (3) reside in the British Isles upon the effective date of this Act, as amended, but have not either firmly settled or resettled, and (4) have registered for an immigration visa with a United States consular officer in Great Britain prior to the effective date of this Act, as amended: *Provided*, That they meet all requirements of the immigration laws of the United States for admission into the United States for permanent residence.

"(4) A number of immigration visas not to exceed seven thousand five hundred may be issued within the total numerical limitations provided in subsection (a) of this section to persons who are natives of Greece and who on or after January 1, 1940, and on or before January 1, 1949, were forcibly removed or forced to flee from their former habitual residence in Greece as a direct result of military operations in Greece by the Nazi government or by military operations in Greece by the Communist guerrillas, and prior to January 1, 1950, had not been either firmly settled or firmly resettled, and are qualified under the immigration laws of the United States for admission into the United States for permanent residence; and a number of immigration visas not to exceed two thousand five hundred may be issued within the total numerical limitations provided in subsection (a) of this section to persons who prior to June 30, 1950, were residents and nationals of Greece, who are eligible for admission to the United States as first or second preference quota immigrants, and who prior to June 30, 1951, make application to an American consular officer in Greece for appropriate visas to the United States for permanent residence.

"(5) In lieu of affidavits of support or other evidence of support, a person authorized to be admitted under subdivisions (2), (3), and (4) of this subsection may submit to the consuls assurances by a citizen or citizens of the United States, in accordance with the regulations of the Department of State, that such person, if admitted into the United States, will be suitably employed without displacing some other person from employment and that such person and the members of such person's family who shall accompany such person or who propose to live with such person shall not become public charges and will have housing without displacing some other person from such housing. The spouse and unmarried dependent child or children under twenty-one years of age, including adopted children and stepchildren of persons defined in subdivisions (2), (3), and (4) of this subsection, shall, if otherwise qualified for admission into the United States for permanent residence, also be granted immigration visas within the numerical limitations set forth in the respective subdivisions. Those provisions of section 5 of this Act which relate to the contract-labor clause of the immigration laws and to the payment of ticket or passage shall be applicable to persons whose admission is authorized under the provisions of this section.

"(c) Upon the issuance of an immigration visa to any alien as provided for in this Act, as amended, except to eligible displaced orphans, and except to aliens defined in sections 2(f) and 12 of this Act, as amended, the consular officer shall use a quota number from the immigration quota for the country of the alien's nationality as defined in section 12 of the Immigration Act of May 26, 1924 (8 U.S.C. 212), for the fiscal year then current at the time or, if no such quota number is available for said

fiscal year, in that event for the first succeeding fiscal year in which a quota number is available: *Provided*, That not more than 25 per centum of any quota shall be so used in any fiscal year beginning July 1, 1950, and ending June 30, 1954; and that not more than 50 per centum of any quota shall be so used in any fiscal year beginning July 1, 1954: *Provided further*, That during the fiscal years beginning July 1, 1950, and ending June 30, 1954, 50 per centum of the nonpreference portion of the immigration quotas as defined in section 6 of the Act of May 26, 1924, as amended (8 U.S.C. 206), shall be available to applicants for immigration visas who are otherwise qualified for admission into the United States for permanent residence, and who (1) on or after September 1, 1930, and before January 1, 1949, entered an area or country in Europe outside Italy or the American sector, the British sector, or the French sector of either Berlin or Vienna, or the American zone, the British zone, or the French zone of either Germany or Austria: *Provided further*, That for the purposes of this section the quotas referred to shall be computed on an annual rather than a monthly basis: *Provided further*, That any person who is an applicant for admission pursuant to this Act, as amended, and for whom assurances have been given by a citizen or citizens of the United States that such person, if admitted into the United States, will be suitably employed without displacing some other person from employment and that such person, and the members of such person's family who shall accompany such person and who propose to live with such person, shall not become public charges and will have housing without displacing some other person from such housing, shall not be required to furnish any affidavit or other evidence of support pursuant to the regulations (22 C.F.R. 42.327) promulgated under authority of subsection 7(b) of the Immigration Act of May 26, 1924, or any other law or regulation; (2) establish that they are persons of European national origin displaced from the country of their birth, or nationality, or of their last residence, as a result of events subsequent to the outbreak of World War II; (3) that they cannot return to any of such countries because of persecution or fear of persecution on account of race, religion, or political opinions; and (4) that they have not been firmly resettled in any other country. The spouse and the unmarried dependent child or children under twenty-one years of age, including adopted children and stepchildren of persons who establish their eligibility for immigration into the United States under this proviso, shall also be granted such eligibility if otherwise qualified for submission into the United States for permanent residence.

"(d) The selection of eligible displaced persons shall be made without discrimination in favor of or against a race, religion, or national origin of such eligible displaced persons, and the Commission shall insure that equitable opportunity for resettlement under the terms of this Act, as amended, shall be afforded to eligible displaced persons of all races, religions, and national origins. The extent to which the Commission has accomplished the foregoing objective shall be specifically indicated in the semiannual reports of the Commission filed pursuant to section 8 of this Act."

Sec. 5. Section 4(a) of the Displaced Persons Act of 1948 is hereby amended to read:

"(a) Any alien who (1) entered the United States prior to April 30, 1949, and was on that date in the United States, or if he was temporarily absent from the United States on that date for reasons which, in accordance with regulations to be promulgated by the Attorney General, show special circumstances justifying such absence, and (2) is otherwise admissible under the immigration laws, and (3) is a displaced person residing in the United States as defined in this section may, within two years next following the effective date of this Act, as amended, apply to the Attorney General for an adjustment of his immigration status. If the Attorney General shall, upon consideration of all the facts and circumstances of the case, determine that such alien has been of good moral character for the preceding five years and that such alien is qualified under the provisions of this section, the Attorney General shall report to the Congress all of the pertinent facts in the case. If during the session of the Congress at which a case is reported, or prior to the end of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution stating in substance that it favors the granting of the status of permanent residence to such alien the Attorney General is authorized, upon receipt of a fee of \$18, which shall be deposited in the Treasury of the United States to the account of miscellaneous receipts, to record the admission of the alien for permanent residence as of the date of the alien's last entry into the United States. If prior to the end of the session of the Congress next following the session at which a case is reported, the Congress does not pass such resolution, the Attorney General shall thereupon deport such alien in the manner provided by law:

Provided, That the number of displaced persons who shall be granted the status of permanent residence pursuant to this section shall not exceed fifteen thousand. Upon the grant of status of permanent residence to such alien as provided for in this section, the Secretary of State shall, if the alien was a quota immigrant at the time of entry, reduce by one the immigration quota of the country of the alien's nationality as defined in section 12 of the Immigration Act of May 26, 1924, for the fiscal year then current or the next succeeding fiscal year in which a quota number is available, except that quota deductions provided for in this section shall be made within the limitations contained in the first proviso of subsection (c) of section 3 of the Displaced Persons Act of 1948, as amended.

Sec. 6. Section 6 of the Displaced Persons Act of 1948 is amended to read:

"Sec. 6. The preferences provided within the quotas by section 6 of the Immigration Act of 1924, as amended (8 U.S.C. 206), shall not be applicable in the case of any person receiving an immigration visa under this Act, except as otherwise herein specifically provided but in lieu of such preferences the following preferences, without priority in time of issuance of visas as between such preferences or as between preference or nonpreference cases under this Act, as amended, shall be granted to persons and their family dependents who are the spouse or the unmarried dependent child or children under twenty-one years of age, including adopted children and stepchildren of such persons, in the consideration of visa applications: "(a) First. Persons who are farm, household, construction, clothing, and garment workers, and other workers needed in the locality in the United States in which such persons propose to reside, or persons possessing special educational, scientific, technological, or professional qualifications.

"(b) Second. Persons who are the blood relatives of citizens or lawfully admitted alien residents of the United States, such relationship in either case being within the third degree of consanguinity computed according to the rules of the common law.

"No visa shall be issued to any alien whose admission under this Act is based on the submission of an assurance of suitable employment unless he shall first execute a signed statement under oath or affirmation that he accepts and agrees in good faith to abide by the terms of employment provided for such person in the assurance upon which the application for a visa under this Act is based. The Commission is hereby authorized and empowered to administer an oath or take an affirmation for this purpose and to designate employees who shall have power to administer such oath or affirmation: *Provided*, That upon a finding by the Attorney General that such statement was falsely made it shall be deemed to be a misrepresentation for the purpose of gaining admission into the United States as provided for in section 10 of the Displaced Persons Act of 1948, as amended: *Provided further*, That in determining whether or not the person accepted and agreed in good faith to abide by the said terms of employment the Attorney General shall consider the manner conditions, extent, and duration of the person's employment after admission into the United States. Such alien and any alien found to have been inadmissible under the provisions of this Act at the time of entry shall, irrespective of the date of his entry, be taken into custody and deported in the manner provided by sections 19 and 20 of the Immigration Act of February 5, 1917, as amended."

Sec. 7. Section 7 of the Displaced Persons Act of 1948 is amended to read:

"Sec. 7. Within the preferences provided in section 6, priority in the issuance of visas shall be given to eligible displaced persons who during World War II bore arms against the enemies of the United States or who served honorably in the labor service or guard units of the United States Army, and their family dependents who are the spouse or the unmarried dependent child or children under twenty-one years of age, including adopted children and stepchildren."

Sec. 8. Section 8 of the Displaced Persons Act of 1948 is amended by striking out the date "June 30, 1951" in the first sentence and inserting in lieu thereof the date "August 31, 1952" and by amending the sixth sentence to read as follows: "The Commission shall formulate and issue regulations for the purpose of obtaining the most general distribution and settlement of persons admitted under this Act, consistent with housing and employment opportunities for resettlement, throughout the United States and their Territories and possessions". The seventh sentence of section 8 of the Displaced Persons Act of 1948 is amended to read as follows: "It shall also be the duty of the Commission to report on February 1, 1949, and semiannually thereafter to the President and to the Congress on the situation regarding eligible displaced orphans, eligible displaced persons and displaced persons; and such reports shall include full and complete details respecting the administration of the funds authorized to be appropriated pursuant to section 14 of the Displaced Persons Act of 1948, as amended, including the names of persons and organizations to whom loans shall be made and the amount of such loans."

Sec. 9. The second sentence of section 10 of the Displaced Persons Act of 1948 is amended to read as follows: "The burden of proof shall be upon the person who seeks to establish his eligibility under this Act, and no person shall be certified by the Commission as eligible under this Act if the Commission knows or has reason to believe that the alien (1) is not a displaced person and an eligible displaced person or (2) is not eligible under the terms of this Act; and no person shall be issued an immigration visa or be admitted into the United States under this Act if the consular officer or the immigrant inspector knows or has reason to believe that the alien is subject to exclusion from the United States under any provision of the immigration laws or (1) is not a displaced person and an eligible displaced person, or (2) is not eligible under the terms of this Act: *Provided*, That nothing in this section shall remove the right review and appeal available to aliens under general immigration laws."

Sec. 10. Section 12 of the Displaced Persons Act of 1948 is amended to read as follows:

"Sec. 12. (a) Notwithstanding the provisions of section 12 of the Act of May 26, 1924, as amended, until July 1, 1952, a number of immigration visas not to exceed fifty-four thousand seven hundred and forty-four may be issued to persons of German ethnic origin who were born in Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, Russia, or Yugoslavia, or areas under the control and domination of any such countries, except those parts of Germany and Austria under military occupation by the Union of Soviet Socialist Republics, and who on January 1, 1949, resided in the western zones of Germany or Austria, or western sectors of Berlin or Vienna. Assurances shall be executed by a citizen or citizens of the United States in accordance with regulations of the Commission that persons eligible under this section, if admitted into the United States, will be suitably employed without displacing some other person from employment and that any such person and the members of his family who propose to live with him shall not become public charges, and will have housing without displacing some other person from such housing. The spouse and unmarried child or children under twenty-one years of age, including adopted children and stepchildren, of any person eligible under this section shall, if otherwise qualified for admission into the United States for permanent residence, also be eligible under the provisions of this section. All persons qualifying for admission under this section shall be exempt from paying visa and head taxes, and no such person shall be admitted into the United States unless there shall have been first a thorough examination and written report as provided for in section 10 of the Displaced Persons Act of 1948, as amended.

"(b) Upon the issuance of an immigration visa under subsection (a) above, which shall be in addition to the numbers authorized in section 3(a) of the Displaced Persons Act of 1948, as amended, the consular officer shall use, notwithstanding the provisions of section 11(f) of the Immigration Act of May 26, 1924 (8 U.S.C. 211), a quota number from that portion of the quotas for Germany and Austria for the fiscal years ending June 30, 1949, and June 30, 1950, which was made available to persons of German ethnic origin under the provisions of section 12 of Public Law 774, Eightieth Congress, except that the total of such quota numbers shall not exceed by seven thousand the quota numbers used under the authority of the said section prior to June 30, 1950; and if no such quota number is available in that event the consular officer shall use a quota number from the immigration quota of the country of nationality of the person who receives the visa as defined in section 12 of the Immigration Act of May 26, 1924 (8 U.S.C. 212): *Provided*, That not more than 50 per centum of the quotas of the country of nationality of persons who receive immigration visas under this section shall be used in any fiscal year, and quota deductions authorized under this proviso shall be made within the limitations contained in the first proviso of subsection (c) of section 3 of the Displaced Persons Act of 1948, as amended."

"(c) Notwithstanding the preferences provided by section 6 of this Act, as amended, first priority in the issuance of visas chargeable to the German or Austrian quota under the provisions of section 12 of the Act of May 26, 1924, as amended (8 U.S.C. 212), or under the provisions of this section, shall be granted to children who were sixteen years of age or under on June 25, 1948, and who prior to May 1, 1949, were legally adopted under the laws of the country in which they resided, by American citizens residing abroad temporarily. Those provisions of section 5 of this Act which relate to the contract-labor clause of the immigration laws and to the payment of ticket or passage shall be applicable to persons whose admission is authorized under the provisions of this section.

"(d) The Commission shall make the necessary arrangements incident to the transfer of persons eligible for emigration to the United States under this section

from their place of residence in Germany or Austria to the port of embarkation and from the port of embarkation to the port of entry in the United States. Notwithstanding the provisions of any other law, the Reconstruction Finance Corporation is authorized and directed, until such time as an appropriation is made for the purpose of this section, to make advances not to exceed in the aggregate \$2,500,000 to the Commission which shall be employed by the Commission to finance the transportation and necessary incidents thereto of persons who are eligible for emigration to the United States under this section from their place of residence in Germany or Austria to the port of entry in the United States. No interest shall be charged on advances made by the Treasury to the Reconstruction Finance Corporation for this purpose, and the Reconstruction Finance Corporation shall be repaid without interest for advances made by it hereunder from funds made available for the purposes of this section."

Sec. 11. Section 13 of the Displaced Persons Act of 1948 is amended to read:

"Sec. 13. No visas shall be issued under the provisions of this Act, as amended, to any person who is or has been a member of the Communist Party, or to any person who adheres to, advocates, or follows, or who has adhered to, advocated, or followed, the principles of any political or economic system or philosophy directed toward the destruction of free competitive enterprise and the revolutionary overthrow of representative governments, or to any person who is or has been a member of any organization which has been designated by the Attorney General of the United States as a Communist organization, or to any person who is or has been a member of or participated in any movement which is or has been hostile to the United States or the form of government of the United States, or to any person who advocated or assisted in the persecution of any person because of race, religion, or national origin, or to any person who has voluntarily borne arms against the United States during World War II. Upon arrival at the port of entry in the United States, every person eighteen years of age or older authorized to be admitted under this Act, shall take and subscribe an oath or affirmation that he is not and has never been a member of any organization or movement named in this section, and shall be liable to prosecution for perjury if such oath or affirmation is willfully false. If any person not entitled to a visa under this section shall nevertheless gain admission to this country, in addition to the penalty above-mentioned, such person shall irrespective of the date of his entry, be deported in the manner provided by sections 19 and 20 of the Immigration Act of February 5, 1917, as amended."

Sec. 12. Section 14 of the Displaced Persons Act of 1948 is renumbered as section 15 and a new section is added to the Displaced Persons Act of 1948 to be known as section 14 and to read:

"Sec. 14. Notwithstanding the provisions of any other law, the Reconstruction Finance Corporation is authorized and directed, until such time as an appropriation is made for the purposes of this section to make advances not to exceed in the aggregate \$5,000,000, to the Commission which shall be employed by the Commission for loans through public or private agencies to persons who provide assurances, or to public or private agencies to finance the reception and transportation of eligible displaced persons and eligible displaced orphans and persons authorized to be admitted under section 12 of this Act, as amended, from ports of entry within the United States or its Territories or possessions. Such loans, which shall mature not later than June 30, 1953, shall be made under rules and regulations approved by the President. No interest shall be charged on advances made by the Treasury Department to the Reconstruction Finance Corporation for the purposes of this section, and the Reconstruction Finance Corporation shall be repaid without interest for advances made by it hereunder from funds made available for the purposes of this section."

Sec. 13. The Displaced Persons Act of 1948 is amended by adding a new section to read as follows:

"Sec. 16. Representatives of the Government of the United States are authorized to participate in a conference between affected nations for the purpose of studying and making recommendations providing for a satisfactory solution of the problems of persons of German ethnic origin who were expelled from the countries of their residence into Germany and Austria and are presently residing in those countries. The appropriation of such sums as may be necessary to carry out this section is hereby authorized."

Sec. 14. The Displaced Persons Act of 1948 is amended by adding at the end thereof a new section to read as follows:

"Sec. 17. All transportation by ships or planes of aliens under this Act, to the United States, the cost of which is defrayed in whole or in part by the Government

of the United States, shall be by ships or planes registered under the United States flag, or by ships owned by the United States."

Approved June 16, 1950, 12:42 p.m., E.D.T.

EXECUTIVE ORDER No. 10003

13 F.R. 5819

PROVIDING FOR THE INVESTIGATION OF AND REPORT ON DISPLACED PERSONS SEEKING
ADMISSION INTO THE UNITED STATES

By virtue of the authority vested in me by section 10 of the Displaced Persons Act of 1948, approved June 25, 1948,¹ and as President of the United States, it is ordered as follows:

1. The Displaced Persons Commission is hereby designated as the agency which shall, subject to the provisions of paragraph 2 hereof, make or prepare the investigations and written reports required by section 10 of the Displaced Persons Act of 1948 regarding the character, history, and eligibility under the said Act of displaced persons seeking admission into the United States.

2. The Department of State, the Department of the Army, and such other agencies of the Government as the Displaced Persons Commission may request, shall, in accordance with arrangements agreed upon between the Commission and any such department or agency, furnish the Commission such assistance as it may need in carrying out its responsibilities under paragraph 1 of this order.

HARRY S. TRUMAN.

THE WHITE HOUSE,
October 4, 1948.

REFUGEE RELIEF ACT OF 1953

See Legislative History, p. 2103

CHAPTER 336—PUBLIC LAW 203

[H.R. 6481]

AN ACT For the relief of certain refugees, and orphans, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the "Refugee Relief Act of 1953".

DEFINITIONS

Sec. 2. (a) "Refugee" means any person in a country or area which is neither Communist nor Communist-dominated, who because of persecution, fear of persecution, natural calamity or military operations is out of his usual place of abode and unable to return thereto, who has not been firmly resettled, and who is in urgent need of assistance for the essentials of life or for transportation.

(b) "Escapee" means any refugee who, because of persecution or fear of persecution on account of race, religion, or political opinion, fled from the Union of Soviet Socialist Republics or other Communist, Communist-dominated or Communist-occupied area of Europe including those parts of Germany under military occupation by the Union of Soviet Socialist Republics, and who cannot return thereto because of fear of persecution on account of race, religion or political opinion.

(c) "German expellee" means any refugee of German ethnic origin residing in the area of the German Federal Republic, western sector of Berlin, or in Austria who was born in and was forcibly removed from or forced to flee from Albania, Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, Union of Soviet Socialist Republics, Yugoslavia, or areas provisionally under the administration or control or domination of any such countries, except the Soviet zone of military occupation of Germany.

(d) "Administrator" means the administrator of the Bureau of Security and Consular Affairs established in the Department of State pursuant to subsection (b) of section 104 of the Immigration and Nationality Act.¹

¹ 50 U.S.C.A. Appendix, § 1959.

² 8 U.S.C.A. § 1104.

SPECIAL NONQUOTA VISAS; NUMBERS

Sec. 3. There are hereby authorized to be issued two hundred five thousand special nonquota immigrant visas to aliens, specified in section 4 of this Act, seeking to enter the United States as immigrants and to their spouses and their unmarried sons or daughters under twenty-one years of age, including stepsons or stepdaughters and sons or daughters adopted prior to July 1, 1953, if accompanying them.

ALLOCATION OF SPECIAL NONQUOTA VISAS

Sec. 4. (a) Special nonquota immigrant visas authorized to be issued under section 3 of this Act shall be allotted as follows:

(1) Not to exceed fifty-five thousand visas to German expellees residing in the area of the German Federal Republic or in the western sectors of Berlin or in Austria: *Provided*, That the visas issued under this paragraph shall be issued only in the German Federal Republic or in the western sector of Berlin or in Austria.

(2) Not to exceed thirty-five thousand visas to escapees residing in the area of the German Federal Republic or the western sectors of Berlin or in Austria: *Provided*, That the visas issued under this paragraph shall be issued only in the German Federal Republic or in the western sector of Berlin or in Austria.

(3) Not to exceed ten thousand visas to escapees residing within the European continental limits of the member nations of the North Atlantic Treaty Organization or in Turkey, Sweden, Iran or in the Free Territory of Trieste and who are not nationals of the area in which they reside: *Provided*, That such visas shall be issued only in the area or areas mentioned in this paragraph.

(4) Not to exceed two thousand visas to refugees who (a) during World War II were members of the armed forces of the Republic of Poland, (b) were honorably discharged from such forces, (c) reside on the date of the enactment of this Act in the British Isles, and (d) have not acquired British citizenship.

(5) Not to exceed forty-five thousand visas to refugees of Italian ethnic origin, residing on the date of the enactment of this Act in Italy or in the Free Territory of Trieste: *Provided*, That such visas shall be issued only in the area or areas mentioned in this paragraph.

(6) Not to exceed fifteen thousand visas to persons of Italian ethnic origin, residing on the date of the enactment of this Act in Italy or in the Free Territory of Trieste, who qualify under any of the preferences specified in paragraph (2), (3) or (4) of section 203(a) of the Immigration and Nationality Act: *Provided*, That such visas shall be issued only in Italy or in the Free Territory of Trieste.

(7) Not to exceed fifteen thousand visas to refugees of Greek ethnic origin residing on the date of the enactment of this Act in Greece: *Provided*, That such visas shall be issued only in Greece.

(8) Not to exceed two thousand visas to persons of Greek ethnic origin, residing on the date of the enactment of this Act in Greece, who qualify under any of the preferences specified in paragraph (2), (3) or (4) of section 203(a) of the Immigration and Nationality Act: *Provided*, That such visas shall be issued only in Greece.

(9) Not to exceed fifteen thousand visas to refugees of Dutch ethnic origin residing on the date of the enactment of this Act in continental Netherlands: *Provided*, That such visas shall be issued only in continental Netherlands.

(10) Not to exceed two thousand visas to persons of Dutch ethnic origin, residing on the date of the enactment of this Act in continental Netherlands, who qualify under any of the preferences specified in paragraph (2), (3) or (4) of section 203(a) of the Immigration and Nationality Act: *Provided*, That such visas shall be issued only in continental Netherlands.

(11) Not to exceed two thousand visas to refugees, residing within the district of an American consular office in the Far East: *Provided*, That such visas shall be issued only in said consular office district and only to refugees who are not indigenous to the area described in this paragraph.

(12) Not to exceed three thousand visas to refugees, residing within the district of an American consular office in the Far East: *Provided*, That such visas shall be issued only in said consular office district and only to refugees who are indigenous to the area described in this paragraph.

(13) Not to exceed two thousand visas to refugees of Chinese ethnic origin whose passports for travel to the United States are endorsed by the Chinese National Government or its authorized representatives.

(14) Not to exceed two thousand visas to refugees who on the date of the enactment of this Act are eligible to receive assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East: *Provided*, That such visas shall be issued only in the area described in this paragraph.

* 8 U.S.C.A. § 1153.

(b) The allotments provided in subsection (a) of this section shall be available for the issuance of immigrant visas to the spouses and unmarried sons or daughters under twenty-one years of age, including stepsons or stepdaughters and sons or daughters adopted prior to July 1, 1953, referred to in section 3 of this Act, of persons referred to in subsection (a) of this section.

ORPHANS

Sec. 5. (a) Not to exceed four thousand special nonquota immigrants visas may be issued to eligible orphans as defined in this Act who are under ten years of age at the time the visas is issued: *Provided*, That not more than two such special non-quota immigrant visas may be issued to eligible orphans adopted or to be adopted by any one United States citizen and spouse, unless necessary to prevent the separation of brothers or sisters.

(b) When used in this Act the term "eligible orphan" shall mean an alien child (1) who is an orphan because of the death or disappearance of both parents, or because of abandonment or desertion by, or separation or loss from, both parents, or who has only one parent due to the death or disappearance of, abandonment or desertion by, or separation or loss from the other parent and the remaining parent is incapable of providing care for such orphan and has in writing irrevocably released him for emigration and adoption; (2) (a) who has been lawfully adopted abroad by a United States citizen and spouse, or (b) for whom assurances satisfactory to the consular officer to whom a visa application on behalf of the orphan is made, have been given by a United States citizen and spouse that if the orphan is admitted into the United States they will adopt him in the United States and will care for him properly; and (3) who is ineligible for admission into the United States solely because the nonpreference portion of the quota to which he would otherwise be chargeable is oversubscribed by applicants registered on the consular waiting list at the time his visa application is made: *Provided*, That no natural parent of any eligible orphan who shall be admitted into the United States pursuant to this Act shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under the Immigration and Nationality Act.

(c) The assurances required in this section shall be in lieu of the assurances required in section 7 of this Act.

ADJUSTMENT OF STATUS

Sec. 6. Any alien who establishes that prior to July 1, 1953, he lawfully entered the United States as a bona fide nonimmigrant and that because of events which have occurred subsequent to his entry into the United States he is unable to return to the country of his birth, or nationality, or last residence, because of persecution or fear of persecution on account of race, religion, or political opinion, may, within one year after the effective date of this Act, apply to the Attorney General of the United States for an adjustment of his immigration status. If the Attorney General shall, upon consideration of all the facts and circumstances of the case, determine that such alien has been of good moral character for the preceding five years and that the alien was physically present in the United States on the date of the enactment of this Act and is otherwise qualified under all other provisions of the Immigration and Nationality Act except that the quota to which he is chargeable is oversubscribed, the Attorney General shall report to the Congress all the pertinent facts in the case. If, during the session of the Congress in which a case is reported or prior to the end of the session of the Congress next following the session in which a case is reported, the Congress passes a concurrent resolution stating in substance that it approves the granting of the status of an alien lawfully admitted for permanent residence to such alien, the Attorney General is authorized, upon the payment of the required visa fee, which shall be deposited in the Treasury of the United States to the account of miscellaneous receipts, to record the alien's lawful admission for permanent residence as of the date of the passage of such concurrent resolution. If, within the above specified time, the Congress does not pass such a concurrent resolution, or, if either the Senate or the House of Representatives passes a resolution stating in substance that it does not approve the granting of the status of an alien lawfully admitted for permanent residence, the Attorney General shall thereupon deport such alien in the manner provided by law: *Provided*, That the provisions of this section shall not be applicable to any aliens admitted into the United States under the provisions of Public Law 584, Seventy-ninth Congress, second session (60 Stat. 754),¹ Public Law 402, Eightieth Congress, second session (62

¹50 U.S.C.A. Appendix, §§ 1619, 1641.

²22 U.S.C.A. §§ 1431 et seq.

Stat. 6)* *Provided further*, That the number of aliens who shall be granted the status of aliens lawfully admitted for permanent residence pursuant to this section shall not exceed five thousand.

ASSURANCES

Sec. 7. (a) Except as otherwise herein provided, no visa shall be issued to any alien under this Act unless an assurance, in accordance with regulations promulgated pursuant to this Act, shall first have been given by a citizen or citizens of the United States, will be suitably employed without displacing some other person from employment and that such alien and the members of such alien's family who shall accompany such alien and who propose to live with such alien will not become public charges and will have housing without displacing some other person from such housing. The spouse and unmarried dependent sons and daughters under twenty-one years of age, including stepsons and stepdaughters and sons or daughters adopted prior to July 1, 1953, of such alien, shall not be required to have such assurances made in their behalf. The assurances shall be submitted to the Administrator and it shall be the duty of the Administrator to verify the authenticity and bona fides of such assurances and such assurances shall be subject to final acceptance and approval by consular and immigration officers. Blanket assurances, or assurances not submitted by a responsible individual citizen or citizens, shall not be considered as satisfying the requirements of this section. The assurances for employment and housing shall be indexed and filed in such manner so as to show the specific address or addresses in the United States in which both the employment and housing are available, the type of employment and housing which are available, and the conditions and terms of the employment. Each assurance shall be a personal obligation of the individual citizen or citizens giving or submitting to the alien eligible under paragraph (6), (8) or (10) of section 4(a) of this Act, if such alien provides satisfactory evidence that he will not become a public charge.

(b) Any alien admitted under this Act and subsequently determined to have been inadmissible under the provisions of this Act at the time of entry shall, irrespective of the date of his entry, be taken into custody and deported in the manner provided by sections 242 and 243 of the Immigration and Nationality Act (66 Stat. 208-214).*

(c) Assistance rendered an alien in connection with his transportation to and resettlement in the United States shall not be regarded as a cause for excludability as an alien likely to become a public charge. No alien with respect to whom assurances have been furnished as provided in this section shall be deemed to be a pauper under paragraph (8) of section 212(a) of the Immigration and Nationality Act (66 Stat. 182).*

(d) No alien shall be issued a visa under this Act or be admitted into the United States unless he shall present to the consular officer at the time of making application for a visa or to the immigration officer at the time of application for admission (1) a valid unexpired passport or other suitable travel document, or document of identity or nationality, or other documentary evidence that he will be assured of readmission to the country of his nationality, foreign residence or in which he obtains a visa under this Act and (2) a certificate of readmission guaranteeing his readmission to the country in which he obtains a visa under this Act if it is subsequently found that he obtained a visa under this Act by fraud or by misrepresenting a material fact.

INTERGOVERNMENTAL ARRANGEMENTS

Sec. 8. The Secretary of State may, for the purposes of this Act, make such arrangements with foreign governments and with the Intergovernmental Committee for European Migration as are necessary and appropriate for the purpose of financing the overseas transportation of persons who may be issued visas under this Act, such arrangements to be mutually beneficial to the economies of the United States and the countries concerned, as well as to such persons. Such arrangements, where appropriate, may seek to enable immigrants under this Act to transfer into dollar currency personal assets necessary for defraying the cost of transportation and for use in the United States. Arrangements between the United States and the other governments concerned and the Intergovernmental Committee for European Migration should also provide for such cooperation and assistance as may be required in the administration of the program authorized under this Act in the territory of the intending immigrant's residence. All transportation by ships or

* 8 U.S.C.A. §§ 1252, 1253.

* 8 U.S.C.A. § 1182.

airplanes of aliens under this Act to the United States, the cost of which is defrayed in whole or in part by the Government of the United States, shall be by ships or airplanes registered under the United States flag, if available.

Sec. 9. Within the categories established in section 4 of this Act the determination of the eligibility of persons to receive visas and of the admissibility of such persons into the United States under this Act shall be made without discrimination in favor of or against a race, religion, or the national origin of such persons.

EXEMPTIONS FROM VISA FEES

Sec. 10. Persons receiving visas under this Act shall be exempt from paying the fees prescribed in paragraphs (1) and (2) of section 281 of the Immigration and Nationality Act (66 Stat. 230-231).⁷

SECURITY AND OTHER INVESTIGATION; EFFECT OF MISREPRESENTATION

Sec. 11. (a) No alien shall be issued a visa under this Act or be admitted into the United States unless there shall have first been a thorough investigation and written report made and prepared by such investigative agency or agencies of the Government of the United States as the President shall designate, regarding such person's character, reputation, mental and physical health, history and eligibility under this Act, and such investigations in each case shall be conducted in a manner and in such time as the investigative agency or agencies shall determined to be necessary.

(b) No person shall be issued a visa or be admitted into the United States under this Act if the consular officer or the immigration officer knows or has reason to believe that such person is ineligible for a visa or is subject to exclusion from the United States under any provision of the immigration laws or is not eligible under the terms of this Act.

(c) No person shall be issued a visa or be admitted into the United States under this Act unless the consular officer and the immigration officer, after an inspection and examination of such person abroad, are entirely satisfied upon the basis of affirmative evidence adduced by the applicant that the applicant has established his eligibility for a visa and his admissibility into the United States under this Act and under the immigration laws and regulations: *Provided*, That no person to whom a visa shall be issued shall be exempt from inspection and examination at a port of entry.

(d) No person shall be issued a visa under this Act or be admitted into the United States unless complete information shall be available regarding the history of such person covering a period of at least two years immediately preceding his application for a visa: *Provided*, That this provision may be waived on the recommendation of the Secretaries of State and Defense when determined by them to be in the national interest.

(e) Any person who shall make a material misrepresentation to any agency of the Government entrusted directly or indirectly with the administration, investigation, enforcement, or any other function relating to the implementation of this Act, for the purpose of gaining admission into the United States as an alien eligible hereunder, shall be excluded from admission into the United States under section 212(a) (19) of the Immigration and Nationality Act (66 Stat. 183).⁸

PRIORITIES

Sec. 12. Priorities in the consideration of visa applications under this Act, except in the case of applications filed under paragraph (6), (8) or (10) of section 4(a), without priority in time of issuance of visas as between such priorities or as between priority and non-priority cases under this Act shall be given to—

(1) Persons whose services or skills are needed in the United States, if such need has been certified to the Administrator, at his request, by the United States Employment Service and who are to be employed in a capacity calling for such services or such skill; and

(2) Persons who are (A) the parents of citizens of the United States, such citizens being at least twenty-one years of age, or (B) spouses or unmarried sons or daughters under twenty-one years of age, including stepsons or stepdaughters and sons or daughters adopted prior to July 1, 1953, of aliens lawfully admitted for permanent residence, or (C) brothers, sisters, sons or daughters of citizens of the United States.

Sec. 13. No priority in the consideration of visa applications under this Act shall be given to persons who were determined to be eligible or preliminarily eligible

⁷ 8 U.S.C.A. § 1351.

⁸ 8 U.S.C.A. § 1182.

U.S. Cong. & Adm. News '53—29.

under the provisions of section (2)(c) of Public Law 774, Eightieth Congress, as amended,^{*} solely because such persons were determined to be so eligible or preliminarily eligible.

PERSONS INELIGIBLE; OATH ON ADMISSION; PENALTIES

Sec. 14. (a) No visa shall be issued under this Act to any person who personally advocated or assisted in the persecution of any person or group of persons because of race, religion, or national origin.

(b) Before being issued a visa every alien eighteen years of age or older, authorized to be admitted under this Act, shall take and subscribe an oath or affirmation that he is not and never has been a person specified in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of section 212(a) (28) of the Immigration and Nationality Act (66 Stat. 184-186),¹⁰ except as provided in subparagraph (I) of such section, and shall be liable to prosecution for perjury if such oath or affirmation is willfully false. If any alien not entitled to be issued a visa under this Act and not entitled to be admitted into the United States shall nevertheless gain admission, such alien shall, regardless of the date of his entry, be taken into custody and deported in the manner provided in sections 242 and 243 of the Immigration and Nationality Act (66 Stat. 209-214).¹¹

(c) Any person or persons who shall knowingly violate, conspire to violate, induce or attempt to induce any person to violate any provision of this Act shall be guilty of a felony, and upon conviction thereof shall be fined not more than \$10,000 or shall be imprisoned not more than ten years, or both.

APPLICABILITY OF IMMIGRATION AND NATIONALITY ACT

Sec. 15. Except as otherwise expressly provided by this Act all of the provisions of the Immigration and Nationality Act (66 Stat. 163)¹² shall be applicable under this Act.

LOANS

Sec. 16. Notwithstanding the provisions of any other law, the Secretary of the Treasury is authorized and directed to make loans not to exceed \$5,000,000 in the aggregate, to public or private agencies of the United States for the purpose of financing the transportation from ports of entry within the United States to the places of their resettlement, of persons receiving immigrant visas under this Act, and who lack resources to finance the expenses involved. Such loans, which shall mature not later than June 30, 1963, shall be made under rules and regulations promulgated pursuant to this Act: *Provided*, That such loans shall bear interest at a rate of 3 per centum per annum on the unpaid balance from their maturity date until final payment. No public or private agency shall be eligible to receive a loan under the provisions of this Act while such agency is in default in the payment of any loan made to it pursuant to the provisions of the Displaced Persons Act of 1948, as amended.¹³

ELIGIBLE ALIENS TO BE NONQUOTA IMMIGRANTS

Sec. 17. Any alien granted a visa under this Act shall be deemed a nonquota immigrant for the purposes of the Immigration and Nationality Act. (66 Stat. 163).

AUTHORIZATION OF APPROPRIATIONS

Sec. 18. There are hereby authorized to be appropriated such funds as may be necessary to carry out the purposes of this Act.

REPORTS

Sec. 19. The Administrator shall report to the President and the Congress on the operation of the program established under this Act on or about January 15 and June 15 of each year and shall submit a final report not later than June 15, 1957. Such reports shall include full and complete details regarding the administration of the Act and the administration of the funds provided for in section 16 of this Act.

TERMINATION

Sec. 20. No immigrant visa shall be issued under this Act after December 31, 1956. Approved August 7, 1953.

^{*} 50 U.S.C.A. Appendix, §§ 1951-1963.

¹⁰ 8 U.S.C.A. § 1182.

¹¹ 8 U.S.C.A. §§ 1252, 1253.

¹² 5 U.S.C.A. §§ 342b, 342c, 342e; 8 U.S.C.A. §§ 1101-1503; 18 U.S.C.A. §§ 1114, 1429, 1546; 22 U.S.C.A. §§ 618, 1446; 31 U.S.C.A. § 530; 49 U.S.C.A. §§ 1, 177; 50 U.S.C.A. Appendix, §§ 1952, 1953, 1954, 1955, 1961.

¹³ 50 U.S.C.A. Appendix, §§ 1951-1963.

APPENDIX 2

HISTORY AND BACKGROUND OF SECTION 13 OF THE DISPLACED PERSONS ACT OF 1948, AS AMENDED AND EXCLUSION OF NAZIS FROM THE UNITED STATES

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., February 5, 1976.

To: House Committee on the Judiciary.

From: Education and Public Welfare Division.

Subject: The exclusion of Nazis from the United States, background information on section 13 of the Displaced Persons Act of 1948 as amended.

After World War II, both liberals and restrictionists sought to amend United States immigration law to provide for the exclusion of members of totalitarian parties. Congress was initially concerned with the exclusion of Nazis, but by the late 1940's the exclusion of Communists had become the major concern.¹

In 1945, a subcommittee of the House Committee on Immigration and Naturalization considered a proposal by Chairman Dickstein to bar immigration from Germany in order to exclude Nazis. This proposal was rejected by the committee. Instead, witnesses recommended the establishment of a process to screen out fascists of any nationality, with emphasis on the careful review of individual cases by consular officers abroad.²

In 1946, legislation was introduced by Mr. Gossett to exclude Nazis and to reduce immigration quotas for a ten-year period.³ The bill would have excluded from admission to the United States:

persons, who since December 7, 1941, have served in the armed forces of any country while such country was at war with the United States, or any person who is or at any time has been a member of the Nazi Party, or of the Fascist Party, or of the Gestapo, or of the Schutz Staffel, or of the Sturm Abteilung, or of any other organization or party auxiliary to or supporting nazism or fascism, or any person classified as a war criminal by the Allied War Crimes Commission.⁴

These aliens would also have been made ineligible for United States citizenship. An alien whose service in the armed forces was involuntary and against his will, however, was exempt from these provisions. The bill was not enacted. Quoting from one source:

The House passed Gossett's bill without discussion, but the Senate failed to act on it. Though Gossett introduced the measure again during the next session, no further action was forthcoming in Congress, and the immediate postwar drive to exclude Nazis subsided without achieving concrete results.

For the next two years the displaced persons problem absorbed the attention of Congress.⁵

Congress sought to ensure that the displaced persons legislation it enacted would not provide for the admission of undesirable aliens, particularly subversives. Quoting from the House Judiciary Committee report on 1948 legislation:

¹ Postwar efforts to exclude fascists and Communists are discussed in Divine, Robert A. *American Immigration Policy, 1924-1952*. New Haven, Yale University Press, 1957. pp. 160-163.

² U.S. Congress. House. Committee on Immigration and Naturalization. Subcommittee No. 1. *Study of Problems Relating to Immigration and Deportation and other matters. Hearings*, 79th Congress, 1st session, pursuant to H. Res. 52. 5 parts. Washington, U.S. Govt. Print. Off., 1945. 442 p.

³ Most of the testimony on H.R. 3663 concerned the proposed reduction of immigration quotas. See U.S. Congress. House. Committee on Immigration and Naturalization. *To Deny Admission to the United States of Certain Aliens and to Reduce Immigration Quotas. Hearings*, 79th Congress, 2nd session, on H.R. 3663. Part 1. Washington, U.S. Govt. Print. Off., 1946. 144 p.

⁴ H.R. 3663, 79th Congress, 2nd session (1946).

⁵ Divine, Robert A. *American Immigration Policy, 1924-1952*. p. 161.

The committee wishes to emphasize at this point that several specific provisions . . . are designed to enable consular officers abroad and immigration authorities in this country to prevent from entering the United States any and all undesirable elements, such as persons . . . whose presence in this country may endanger its public safety—Communists and members or former members of movements or groups which during the war rendered aid and comfort to the enemies of the United States. It is the consensus of the committee that in the administration of the act those safety measures should be strictly adhered to and meticulously enforced.⁶

With respect to security, section 10 of the Displaced Persons Act of 1948 requires in part that a thorough investigation and written report regarding character, history, and eligibility be made before a displaced person shall be admitted to the United States. Section 13 of the 1948 enactment provides that no visas shall be issued under the Displaced Persons Act to anyone who is or has been a member of, or participated in, any movement which is or has been hostile to the United States or its form of government.⁷

There was growing concern, however, that the screening procedures instituted under the authority of the Displaced Persons Act of 1948 were not keeping undesirable aliens out of the United States.⁸ Congress received testimony criticizing the International Refugee Organization for its apparent laxity in making determinations regarding the eligibility of displaced persons, and criticizing the Displaced Persons Commission for its acceptance of certain International Refugee Organization determinations.⁹ For example, a number of aliens appeared to have been admitted to the United States despite adverse reports in the Berlin Documents Center relating to membership in the Nazi Party or its auxiliaries or to German naturalization.¹⁰

The Act of June 16, 1950,¹¹ amended section 10 of the Displaced Persons Act of 1948 in order to strengthen displaced persons screening procedures by giving the Foreign Service and the Immigration and Naturalization Service veto power on questions of eligibility under the Displaced Persons Act as well as on questions of admissibility under other immigration laws.¹² Section 13 of the Displaced Persons Act of 1948 was amended by this legislation to exclude members of subversive organizations or movements, and persons who advocated or assisted in the persecution of any person because of race, religion, or national origin.

Prior to the 1950 amendment, the Displaced Persons Act defined a displaced person by reference to the definitions in the Constitution of the International Refugee Organization. The Constitution specifies that the International Refugee Organization is not concerned with any " . . . person who can be shown . . . to have assisted the enemy in persecuting civil populations of countries, Members of the

⁶U.S. Congress. House. Committee on the Judiciary. Emergency Displaced Persons Admission Act; report to accompany H.R. 6396, 80th Congress, 2nd session. Washington, U.S. Govt. Print. Off., 1948. p. 15 (80th Congress, 2nd session. House. Report No. 1854).

⁷Act of June 25, 1948, ch. 647, 62 Stat. 1009.

⁸Security procedures instituted under the authority of the Displaced Persons Act are described in U.S. Displaced Persons Commission. The DP Story, the Final Report of the United States Displaced Persons Commission. Washington, U.S. Govt. Print. Off., 1952. pp. 70-71, 99-102, 133-135, 142-147, 170-179, 309-310.

These procedures are also described in U.S. House. Committee on the Judiciary. Amending the Displaced Persons Act of 1948; report to accompany H.R. 4567, 81st Congress, 1st session. Washington, U.S. Govt. Print. Off., 1949. p. 7. (81st Congress, 1st session. House. Report No. 581)

⁹U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Amendments to the Displaced Persons Act. Displaced Persons. Hearings, 81st Congress, 1st and 2nd sessions, on bills to amend the Displaced Persons Act of 1948. Washington, U.S. Govt. Print. Off., 1950. 1237 p.

The testimony of Almanza Tripp, U.S. Immigration and Naturalization Service, Munich, Germany, beginning on pp. 647, 703, 857, and 895, is of particular interest.

Other information on the administration of security procedures under the Displaced persons Act may be found in Displaced Persons. [Debate in the Senate] Congressional Record v. 96; March 3, 1950: 2712-2719; March 6, 1950: 2846-2853; and April 5, 1950: 4724-4728.

See also U.S. Congress. Senate. Committee on the Judiciary. Amending the Displaced Persons Act of 1948; report to accompany H.R. 4567, 81st Congress, 2nd session. Washington, U.S. Govt. Print. Off., 1950. pp. 5, 6, 9-10. (81st Congress, 2nd session. Senate. Report No. 1237).

¹⁰U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Amendments to the Displaced Persons Act. Displaced Persons. Hearings, 81st Congress, 1st and 2nd sessions. pp. 1003-1005.

¹¹ch. 262, 64 Stat. 219.

¹²U.S. Congress. House. Conference Committee. Amending the Displaced Persons Act of 1948; report to accompany H.R. 4567, 81st Congress, 2nd session. Washington, U.S. Govt. Print. Off., 1950. p. 15. (81st Congress, 2nd session. House. Report No. 2187).

United Nations; * * *¹³ We were unable to locate any discussion of the reasons for the inclusion of similar language in section 13 of the Displaced Persons Act as amended to exclude persons who advocated or assisted in the persecution of any person because of race, religion, or national origin. However, it seems likely that the inclusion of such language was part of the general effort by Congress to amend the Act to set forth definitions of displaced persons within the meaning of United States law without reference to the Constitution of the International Refugee Organization.¹⁴

Section 13 of the Displaced Persons Act was also amended to require every person eighteen years of age or older admitted under the Displaced Persons Act as amended to take an oath that he is not and has never been a member of any organization or movement named in this section. This section as amended provides that:

If any person not entitled to a visa under this section shall nevertheless gain admission to this country, * * * such person shall, irrespective of the date of his entry, be deported in the manner provided by sections 19 and 20 of the Immigration Act of February 5, 1917, as amended.¹⁵

Another 1950 enactment, the Internal Security Act of 1950,¹⁶ did not amend the Displaced Persons Act as such, but the Displaced Persons Commission followed its provisions for the exclusion of aliens who are members of or affiliated with Communist or other totalitarian parties. More than 100,000 displaced persons were estimated to have been adversely affected by this legislation.¹⁷

The effect of such law was * * * to establish a virtual block on all persons who had lived behind the Iron Curtain or in Hitler's Germany or Mussolini's Italy. This was due to the fact that membership in organizations—of a character proscribed by the Internal Security Act—was often involuntary or compulsory * * *.

Pending the amendment which clarified the intent of the Congress as to the exact limits of the exclusionary provisions, displaced persons and expellees who arrived in the United States were granted temporary admission to the United States through the machinery of the ninth proviso of the Immigration Act of 1917.

This situation was not rectified until March 28, 1951, when Public Law 14 clarified the terms "membership of" and "affiliated with," and directed that they be construed to mean only voluntary membership or affiliation with the outlawed organizations.¹⁸

With respect to the exclusion of Nazis, it is important to note that the Immigration and Nationality Act of 1952,¹⁹ unlike previous immigration legislation providing for the exclusion of aliens who are members of or affiliated with totalitarian parties,

* * * defines "totalitarian party" as one which advocates totalitarianism in the United States. Thus it does not exclude adherents of Hitler's Nazi Party or of any other non-Communist totalitarian regimes of Latin America, Europe, the Middle East, or Asia. It seems evident, consequently that this statutory provision is concerned almost exclusively with membership or affiliation with various Communist Parties and their satellites.²⁰

Congress received testimony in opposition to the inclusion of language distinguishing between Nazis and Communists with respect to exclusion from the United States.²¹ However, the exclusion of Communists appeared to be of greater concern to Congress at this time, as it appeared to be, during the consideration of emergency refugee legislation in 1953. Although the Refugee Relief Act of 1953²² bars any person who personally advocated or assisted in the persecution of any person or group of persons because of race, religion, or national origin from being issued a visa

¹³ U.S. Congress. House. Committee on the Judiciary. Amending the Displaced Persons Act of 1948; report to accompany H.R. 4567, 81st Congress, 1st session, p. 44. (Report no. 581)

¹⁴ U.S. Congress. Senate. Committee on the Judiciary. Amending the Displaced Persons Act of 1948; report to accompany H.R. 4567, 81st Congress, 2nd session, p. 6. (Report no. 1237)

¹⁵ Act of June 16, 1950, ch. 262, 64 Stat. 219.

¹⁶ Act of Sept. 23, 1950, ch. 1024, 64 Stat. 987.

¹⁷ U.S. Displaced Persons Commission, *The DP Story, The Final Report of The United States Displaced Persons Commission*, p. 70.

¹⁸ *Ibid.*, p. 71.

¹⁹ Act of June 27, 1952, ch. 477, 66 Stat. 163.

²⁰ Gordon Charles, and Harry N. Rosenfield. *Immigration Law and Procedure*. Rev. ed. Vol. 1. New York, Matthew Bender, 1975. Sec. 2.47b.

²¹ U.S. Congress. Committee on the Judiciary. *Revision of Immigration, Naturalization, and Nationality Laws*. Joint Hearings, 82d Congress, 1st sess., on S. 716, H.R. 2379, and H.R. 2816. Washington, U.S. Govt. Print. Off., 1951, 787 p.

²² See statement of Stanley H. Lowell, *Americans for Democratic Action*, Washington, D.C., pp. 413-417.

²³ Act of August 7, 1953, ch. 336, 67 Stat. 400.

under this Act, we were unable to locate any discussion of the reasons for the inclusion of this language.

I hope this information is helpful. Please let me know if I can be of further assistance.

CATHERINE McHUGH.

APPENDIX 3

STEP-BY-STEP PROCEDURE FOR REVOCATION OF CITIZENSHIP AND DEPORTATION OF NATURALIZED CITIZENS

- (1) District Director having jurisdiction over the area where the naturalized citizen resides reviews the evidence and reports to Regional Commissioner.
- (2) Regional Commissioner prepares "affidavit of good cause" stating why action should be taken to denaturalize (remove the citizenship) of the naturalized citizen.
- (3) Affidavit of good cause is forwarded to the General Counsel of the Immigration Service and INS headquarters in Washington.
- (4) INS General Counsel recommends to Justice Department Criminal Division that proceedings be initiated to revoke citizenship.
- (5) Criminal Division, if it concurs in the recommendation, advises U.S. Attorney having jurisdiction over the area where the naturalized citizen resides to file a suit in U.S. District Court seeking to have the naturalization revoked.
- (6) Naturalized citizen has full rights of appeal through judicial system. (If successful in having citizenship revoked, INS then must initiate separate proceedings to deport the alien).

STEP-BY-STEP PROCEDURE FOR DEPORTATION PROCEEDINGS AGAINST ALIENS

- (1) An "Order to show cause" is issued by the Immigration Service District having jurisdiction over the area where the alien resides. The document describes the charges against the alien and sets forth the legal basis as to why the individual is deportable. The alien is instructed to report to the Immigration Service office on a specified date for a hearing on the charges before an administrative hearing officer, (immigration judge).
- (2) Hearing is held, with the burden of proof on the Government to show that the alien is deportable. Deportability must be shown by clear, convincing and unequivocal evidence (as set forth by the Supreme Court).
- (3) The hearing officer renders a decision.
- (4) The decision can be appealed by either the alien or the Government to the Board of Immigration Appeals. The Board is composed of a five-man panel within the Justice Department. It is not under the jurisdiction of the Commissioner of Immigration.
- (5) If the Board rules against the alien, he can obtain judicial review before the U.S. Circuit Court of Appeals. The petition for judicial review results in an automatic stay of execution of the deportation order. The Government cannot appeal an adverse ruling by the Board.
- (6) If the Court of Appeals rules against the alien, he may petition the Supreme Court to review the decision.
- (7) When appeals through the court system have been exhausted, the Immigration Service approaches the country to which the alien is to be deported requesting that his return be accepted. (Inquiries may have been initiated earlier on this matter.)
- (8) When a country agrees to accept return of the alien, he is removed to that nation at U.S. Government expense.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, *Plaintiff,*

vs.

FEODOR FEDORENKO, *Defendant.*

Case No. 77-2668-Civ-NCR

The Government seeks to strip defendant of his American citizenship granted in 1970. Basically the Government charges that defendant lied on his application for a visa in 1949, particularly in not disclosing he served as a guard at the death camp at Treblinka during World War II. Further, the Government charges he participated in atrocities at Treblinka, precluding him from having the good moral character necessary to become an American citizen. Defendant, originally a Ukrainian, contends that he was not a guard voluntarily but he was forced to be one as a prisoner

of war of Nazi Germany and denies committing any atrocities at Treblinka or elsewhere.¹

DEFENDANT'S CONDUCT IN AMERICA

Defendant Fedorenko came to America in 1949 and has been a respectable resident ever since. Following his arrival he worked on a farm in Connecticut. After a year he worked in a factory in Waterbury and then went to work for Scovill, a manufacturer of brass and copper products; he worked there, usually as a foundry worker, for 20 years until his retirement. He was emphatically described by fellow-workers at Scovill as an "excellent" worker who did not speak unkindly of anyone; that he was so good a worker he had no problems and was a "real gentleman" with no apparent prejudices of any type. The union representative at Scovill testified strongly as to his reliability and performance—a man who never put in a grievance and never had one filed against him. His foreman described defendant as a man who did his job well and cheerfully—a very conscientious and a very good worker.² The court accepts these appraisals as accurately reflecting defendant's work-life and personal life for 29 years.

The defendant married while in America but his American wife has died. For background: until the early 1960's defendant believed his wife and two children in Russia had been killed during World War II. He had been so advised at a prisoner of war camp by two brothers from his town. He has since discovered his wife and sons are alive and living in Crimea; he has visited them in the 1970's. His only schooling was in his native Ukraine for three years from the years 1915 to 1918, during the defeat and collapse of czarist Russia.

Defendant has retired on a social security pension and a pension from his 20 years labor at Scovill. He doesn't own a car; he doesn't own a house; he owns no real estate except a cemetery lot, and he has burial insurance policy. He has accumulated a life savings of \$5,000 but owes his attorney an unknown fee for a trial which lasted 14 days. He has never been arrested in 29 years—not even for a traffic offense. His one failure as a resident and citizen in 29 years: he received one parking ticket. Feodor Fedorenko has been a hard-working and responsible American citizen.

VENUE AND PRELIMINARY MATTERS

This suit was instituted in August, 1977 while defendant was a resident in Miami Beach, pursuant to the requirement of 8 U.S.C. § 1451(a) that suit be filed "in the district in which defendant resides." Defendant challenged venue on the grounds that his presence in Miami Beach, where he was then living, was only temporary and that his permanent residence was in Waterbury, Connecticut. The court denied defendant's motion to transfer, holding that venue properly lay in the Southern District of Florida.³

However, in an effort to alleviate defendant's claim of financial hardship in producing witnesses in Florida the court—through the gracious hospitality of the United States District Court for the District of Connecticut—held a portion of the trial in Waterbury.⁴ Although the hearing in Connecticut was originally scheduled to follow presentation of the Government's case in Fort Lauderdale in April, the Government's case was postponed until late May and June because of a recent appearance by Florida defense counsel.⁵

Consequently, part of defendant's case was heard out of turn prior to the presentation of the Government's case in Fort Lauderdale without objection by either side. Two government witnesses also testified in Waterbury without objection, as a convenience to the witnesses.

¹ This memorandum opinion contains the court's findings of fact and conclusions of law in compliance with Rule 52, F.R.C.P. In addition, the court has included considerable detail about the evidence because of the extensive review of evidence afforded to the Supreme Court and Court of Appeals in denaturalization cases. *U.S. v. Nowak*, 356 U.S. 660, 78 S. Ct. 955 (1958) and others. Further, the court has added observations to give the flavor of the trial as well.

² The only reference to World War II by defendant any fellow worker remembers was when he cried about the loss of his wife and sons.

³ Although the Government produced only minimal proof to justify denial of the motion, defendant admitted at trial that he was a resident of Miami Beach from August 1976 to September 1977 after suit was filed.

⁴ The court appointed itself a special master under Rule 53 F.R.C.P. for the purpose of holding a hearing and receiving evidence in Waterbury. The parties stipulated that the evidence be received without the necessity of filing the report and further that it could be considered as if it had been presented at trial.

⁵ Defendant's initial counsel, Brian Gildea of New Haven, was permitted to withdraw after Gregg Pomeroy of Fort Lauderdale filed his appearance. However, Mr. Gildea assisted at the hearing in Connecticut.

A second problem developed prior to trial with regard to the Government's obtaining testimony of foreign witnesses. Early in November 1977, the court learned of the Government's intention to take depositions out of the country. Because it was concerned that the Government might intend to produce only deposition testimony of foreign witnesses, the court *sua sponte* entered an order prohibiting the use of deposition testimony at trial in order to enable the court to observe the witnesses' faces, body language and reactions in the courtroom, particularly in the presence of defendant and also his reactions to their testimony. The court felt that in-court testimony would be particularly critical in view of possible identification problems and the passage of 35 years since the events complained of at Treblinka. In addition, depositions taken by the Government in Israel almost surely would not have provided cross-examination. In compliance with the court's order the Government was compelled to bring its witnesses from Israel to Fort Lauderdale.⁴

CHARGES AND DEFENSES

Title 8 U.S.C. § 1451(a) provides that for good cause shown the United States Attorney shall institute proceedings to set aside an order admitting a person to citizenship and cancel the certificate of naturalization on the grounds that such order and certificate were "illegally procured or were procured by concealment of a material fact or by willful misrepresentation" and concealment as grounds for denaturalization.

In Count 1 the Government charges that defendant gave false information in his application for Immigration Visa and Alien Registration, and that his citizenship was therefore "illegally procured" because he was never lawfully admitted to the United States.

Counts 2 and 3 allege that defendant was not admissible to the United States under the Displaced Persons Act of 1948, Pub. L. No. 80-774, 62 Stat. 1009, nor was he otherwise admissible under the Immigrations Laws and Orders and Regulations issued thereunder because he participated in the commission of crimes and atrocities against civilians in the Treblinka concentration camp during 1942-43.

Count 4 alleges that defendant wilfully failed to disclose the commission of crimes at Treblinka in response to question No. 6 on his Application to File Petition for Naturalization (Form N-400).

In Count 5 the Government charges that defendant wilfully failed to disclose his service as an armed guard for the Germans in response to question No. 7 on the N-400 form.

Finally, Counts 6 and 7 allege that defendant lacked the good moral character required to become a citizen by virtue of his commission of atrocities at Treblinka and the giving of false statements with request to questions No. 6 and No. 7 as alleged in Counts 4 and 5.

DEFENSES

Defendant Fedorenko in his answer raised the special defenses of waiver and estoppel, improper venue, and the statute of limitations. Primarily defendant contended that the long passage of time between the incidents at issue and the institution of this law suit served to bar the Government from proceeding. The defense of improper venue was based on the allegation that defendant did not reside in Florida at the commencement of this law suit.

At trial, defendant virtually abandoned these special defenses; instead he denied generally having committed atrocities or crimes against humanity while a prison guard at Treblinka. Also, defendant sought to establish that his service as a guard at Treblinka and elsewhere was performed involuntarily while he was himself a prisoner of war.

⁴The court in its order suggested that if the Justice Department wished to bear the expense of defendant and his counsel, and the court's as well, to hear testimony of the Israeli witnesses at some neutral site such as Athens or Istanbul, the court would be willing to do so as a Special Master. The Justice Department declined but the court has since been informed by Government counsel at the pretrial conference that it would have been more economical for them to have done so inasmuch as they brought ten witnesses from Israel for the purposes of trial and most insisted on bringing their spouses as a condition of testifying.

Subsequent to the court's order regarding witnesses' testimony, the Judicial Conference of the United States passed a resolution at the March 1978 meeting prohibiting United States Courts from holding court outside the United States. In view of the expense problem of the Israeli witnesses, as well as the much more critical problem of obtaining testimony of the Russian witnesses discussed subsequently in this opinion, this court must respectfully suggest that special circumstances might justify authorization for a United States District Court to hold evidentiary hearings outside the United States for trial purposes.

BURDEN OF PROOF

Because of the importance of a loss of citizenship to the individual, a denaturalization proceeding is a most sensitive trial.

Thus, the burden of proof in denaturalization cases has been clearly stated by the Supreme Court in *Nowak v. United States*, 356 U.S. 660, 663, 78 S.Ct. 955, 957 (1958), as follows:

Where citizenship is at stake the Government carries the heavy burden of proving its case by "clear, unequivocal, and convincing" evidence, which does not leave 'the issue in doubt'." * * * *Schneiderman v. United States*, 320 U.S. 118, 158, 63 S. Ct. 1333, 1352, 87 L.Ed. 1796. "Especially is this so when the attack is made long after the time when the certificate of citizenship was granted and the citizen has meanwhile met his obligations and has committed no act of lawlessness." *Id.* 320 U.S. at pages 122-123, 63 S.Ct. at page 1335.

As the Supreme Court has stated:

[Denaturalization cases] are extremely serious problems. They involve not only fundamental principles of our political system designed for the protection of minorities and majorities alike. They also involve tremendously high stakes for the individual. For denaturalization, like deportation, may result in the loss "of all that makes life worth living." (citation omitted) *Knauer v. United States*, 328 U.S. 654, 659, 66 S.Ct. 1304, 1307 (1947).

PUBLISHED POLICY CONCERNING DENATURALIZATION CASES

A failure to follow the published policy of the Department of Justice does not bar the bringing of the suit. *United States v. Nelligan*, 573 F.2d 251 (5th Cir. 1978). However, it is interesting to observe the policy of the Department of Justice with respect to bringing denaturalization cases:

In the opinion of the department, as a general rule, a good cause is not shown for the institution of proceedings to cancel certificates of naturalization alleged to have been fraudulently or illegally procured unless some substantial results are to be achieved thereby in the way of betterment of the citizenship of the country.¹

The court cannot help but question the application of this policy towards defendant in view of his 29 years of lawful conduct—except for one parking ticket—and hard work here in America.

The court observed at the trial and iterates it here: never in six years on the bench has the court seen the Government indulge in such expenses as daily copy of the reporter's transcript of testimony or having four lawyers at the Government's counsel table.² Such expenditures of the taxpayers' treasure and talent have not occurred in this court's previous cases such as the prosecution of an alleged Mafia don, a continuing criminal enterprise case, the only dangerous special offender indictment in this district for the reputed salaried slayer for a narcotics importation gang which was responsible for at least 26 murders in the South Florida area according to the testimony in the District Court in Miami, as well as many other serious prosecutions. Clearly the expenditure of the resources of the Executive Branch lies within the discretion of that branch of the Government. However, the court must venture that in view of the similarity in the burden of proof between criminal cases and denaturalization cases, and in view of what is at stake for the naturalized American citizen, the defendant in a denaturalization case ought to have the same resources that are provided a defendant in a criminal case under the Criminal Justice Act; in short the naturalized citizen—provided the defendant's financial condition warrants it—should receive the benefit of court-appointed counsel and other experts at the Government's expense.

¹ The statement of policy continues, as follows: The legislation referred to, being retroactive, is construed to be remedial rather than penal in its nature; for the protection of the body politic rather than for the punishment of the individuals concerned. Ordinarily, nothing less than the betterment of the citizenship of the country should be regarded as sufficient to justify the disturbance of personal and property rights which cancellation proceedings may occasion. This does not mean that such proceedings should not be instituted in any case where willful and deliberate fraud appears, as the perpetration of such fraud would indicate lack of the moral qualifications necessary for citizenship. If, however, many years have elapsed since the judgment of naturalization was apparently so procured, and the party has since conducted himself as a good citizen and possesses the necessary qualifications for citizenship, cancellation proceedings should not, as a rule, be instituted. Dept. of Justice Circular Letter No. 107 (Sept. 20, 1909), reprinted in *Immigration and Naturalization Service Handbook* at 6508, 08.1.

² In addition, the Government which bears the expense of translators, hired two Russian translators for defendant's testimony. The extra one sat behind Government counsel's table—another first.

The Government neither provided a copy of the daily transcript to defendant nor did it offer to provide a "back-up" translator when the Israeli witnesses testified.

One more observation needs to be made before moving to a consideration of the evidence. If ever a case supported the Judicial Conference rule barring cameras from the courtroom, this case does. From the beginning it was like a Hollywood spectacular and polarized the residents of South Florida.

As an example of some of the emotional intensity surrounding the trial, the Jewish Defense League ran ads in newspapers offering chartered buses from Miami Beach to Fort Lauderdale on opening day. A demonstration outside the courtroom ensued with a chant: "Who do we want? Fedorenko. How do we want him? Dead." After the court was interrupted twice and the first three warnings were ignored by the demonstrators, a leader who was using an amplified bullhorn was arrested. A counter-demonstrator appeared two days later with an ensuing confrontation. Lamentably, defendant's counsel was briefly attacked by women spectators at the courtroom entrance at the close of the trial. If the trial has been brought into South Florida homes by television, the incidence of such confrontations likely would have increased.*

EVIDENCE AS TO DEFENDANT'S CONDUCT, 1941-49 PRE-TREBLINKA "

Defendant was mobilized on June 23, 1941, almost immediately after the invasion of the Soviet Union by Nazi Germany. He was a truck driver and the truck he drove was also mobilized. He had no previous military training and in the next two to three weeks his group was encircled twice by the German Army. He escaped the first time but was captured three days later by the Germans with about one-third of his fellow Russian solidiers.

The Germans transported several truckloads of prisoners to Zytomir, a former Soviet training camp, and defendant described the conditions as very bad and with little water or food; the camp housed about 50,000 to 100,000 prisoners, with no barracks available for them. After two or three weeks he was then transferred to Rovno for about 10 days where there were fewer people than at Zytomir; the camp was surrounded by electrified barbed wire.

Next he was transferred to Chelm, Poland, a camp also ringed by barbed wire rolls. The prisoners who tried to escape were trapped on the barbed wire and their plight was quite visible to fellow-prisoners in the morning. While at Chelm he worked in the kitchen, dug holes and built barracks. Defendant estimated the population at Chelm at about 80,000 prisoners.

Defendant described the conditions at Chelm as so bad that if you became ill you rarely recovered. He also indicated that food was at a minimum and that approximately 40,000 prisoners of war died over the winter of 1941-1942. Defendant testified that he supplemented his food intake by eating grass and roots."

Defendant testified he would receive beatings from German soldiers when he didn't understand and comply with orders. On two occasions he was hit with a rifle butt, once when he went to pick up a beet and also when he picked up an apple a Polish citizen had thrown. Defendant testified the conditions at Chelm were so bad that he would have died if he had not been transferred to Travnicki.

One day at Chelm the Germans assembled the Russian prisoners and walked down the line selecting 200 to 300 who were sent on to Travnicki. Defendant vehemently denies volunteering and described the selection process: "they (the Germans) didn't ask; if you didn't go they'd shoot you down like a dog."

* Fortunately, the U.S. Marshal Service and the Fort Lauderdale Police Department performed at their usual outstanding level of competence in maintaining courtroom decorum and order in the environs around the court facility. The deputy marshals even apprehended one news reporter going through the judge's wastebasket under the bench.

The court is unaware if the Government is bringing charges against the demonstrators under 18 U.S.C. § 1507.

"The only evidence as to defendant's activities before Treblinka was given by defendant plus some opinions voiced by Government's expert Jenkins.

"The court can take judicial notice from numerous news stories published during the trial that many spectators at the trial had been in various concentration camps or death camps in Europe or had lost relatives there, or both.

Defendant's testimony on direct began shortly after lunch. During the lunch recess a memorial service for the dead at Treblinka was held in the park-like area immediately outside of the courtroom. (The United States courtroom in Fort Lauderdale is in temporary quarters and the splendid new facilities for the Fort Lauderdale court and Federal Building will not open until about three months hence). Judging from the spectators' reactions to the colloquy over translating problems at the beginning of defendant's testimony, the spectators were hardly receptive to defendant; but that was to be expected as he had been described over the period of two weeks by various witnesses as committing gross atrocities.

Defendant described his early personal life; when he revealed his loss at the age of eight of his father in World War I and that his father was killed "by the Germans, of course", the courtroom became immediately quiet as if an engineer in the sound control booth had turned the gain control knob down to zero. When defendant testified about surviving by eating roots and grass, the courtroom became even quieter although that didn't seem possible.

The court specifically finds that the defendant did not volunteer for transfer to Travnicki.

At Travnicki most of the guards were Volksdeutsche (ethnic Germans who resided outside Germany in the areas occupied by the German Army). Defendant is not a Volksdeutscher but Ukrainian. He was doing carpentry work at Travnicki and testified he had to work or he might be executed. He received several beatings from the guards. Just as defendant was a hard-worker in America, he clearly did not shirk work responsibility at Travnicki—undoubtedly why the Germans selected him. He indicated that sometimes a loaf of bread was given for working.

In the spring of 1942 the Germans gave black uniforms to all of the prisoners. Volksdeutsche also wore black uniforms but theirs were well-tailored and of better material. After the barracks had been constructed at Travnicki the Germans gave instruction in the firing of rifles, such as field-stripping and in marching. They were not allowed to fire a rifle or to keep one. They also received some privileges such as being able to walk down the road outside of the camp. Defendant testified that he went to a Polish home where he gave them soap and they fed him. He added that if a prisoner did not come back he would be executed (when located).

In the spring of 1942 defendant was sent to Lublin where at first the prisoners guarded their own camp and then were sent to the Jewish ghetto; again the Germans did not ask for volunteers but demanded them to go. At Lublin the Soviet prisoners guarded houses, furniture—whatever was left; they were issued rifles which were not fired. The Soviet prisoners were converted from workers to guards at Lublin.

From Lublin defendant was sent to Warsaw along with about 80 to 100 others and the Soviet prisoners were asked if they wanted to go but none volunteered: there was "no choice." They were transported with a few Germans and two or three *zugwachmaenner* (spelled *Zugwachmanner* in German).

Defendant was transported to Treblinka as a prisoner guard in approximately September 1942.

TREBLINKA

The Government called six survivors at Treblinka, four of whom served as working prisoners at Camp 1 and two in what was described as Camp 2 (where the gas chambers were located).¹² Each of the Government witnesses testified as to general or specific instances of murder or brutality on the part of defendant.

¹² Inasmuch as the actual operation of Treblinka is not an issue, it will be described in footnote form to assist in evaluating evidence of what defendant actually did there. Because of the nature of the Government's charge and also the nature of Fedorenko's defense, evidence was presented in clinical and gruesome details about the operation of the death camp known as Treblinka. The testimony was so gruesome that on more than one occasion the court doubted it would be possible to continue taking evidence until the recess time. Early recesses were required for the witnesses on several occasions.

Treblinka was a human abattoir. It contained only living facilities for the SS and the persons working there. The thousands who arrived daily on the trains had no need for barracks or mess halls: they would be dead before nightfall. It was operated with a barbarous methodology—brutally efficient—and such camps surely fill one of the darkest chapters in the annals of human existence, certainly the darkest in that which we call Western civilization.

The camp at Treblinka was described repeatedly by witnesses with details to shock any listener. The camp was garrisoned by approximately 30 members of the SS and 150 Soviet, mostly Ukrainian, guards. Also in the camp were approximately 700 Jewish prisoners, mostly men, who performed various tasks.

The Government witnesses were among the working prisoners who escaped during an uprising on August 2, 1943. Each had been there from eight to ten months as a laborer.

The general methodology emerges from the evidence: the Jewish victims were either rounded up from ghettos in Poland by the SS and Russian, Ukrainian or Latvian guards or were lured into a square by handbills promising each person three kilos of bread and a quantity of jam. One witness, Josef Czarny, then 15, came to the square in response to the notice after his parents and three sisters had starved to death in the Warsaw ghetto. After sometimes being held for as long as three days, they were then herded, with beatings, into cattle cars on a train. The train trip took occasionally three days, although Treblinka was located only about 100 kilometers east of Warsaw. No food or water was permitted the prisoners on the train and some slaked their thirst with perspiration and urine. Several persons perished during the trip and approximately 100 persons would be in the cattle cars or box cars.

Sometimes four or five trains (transporta) would arrive at Treblinka during a day but occasionally there would be none. Each transport would contain 2,000 to 3,000 prisoners. The prisoners, unless selected as a labor prisoner, would be exterminated that same day either in a lazaret or the gas chambers.

Apparently to maintain order the prisoners aboard the train were told they were going to a labor camp although at least one witness testified of knowing what Treblinka was. He also testified he could smell the burning flesh upon arriving there. However, various ruses confronted the prisoners as they were ordered from the trains onto the ramp between two rows of SS troops and Soviet guards urging them to run faster and beating them with whips and rifle butts. The ruses included a sign over the camp entrance in German bearing a motto that "work makes life sweeter" and an orchestra playing at the entrance. The orchestra was conducted by Herbert Gold (a noted conductor from Warsaw, per *Fort Lauderdale news* article dated June 3rd, 1978).

Defendant admits he was a guard at Treblinka; however, he claims that he was a guard involuntarily and denied emphatically that he committed any atrocities or any of the specific acts of brutality described by the witnesses.

It is important to bear in mind that no documentary evidence whatsoever was introduced by the Government or defendant as to the duties or conduct of defendant at Treblinka. Therefore the issue turns entirely on the testimony and credibility of the witnesses.

The first witness, Eugen Turowski, testified that he had seen defendant at the lazaret many times shooting prisoners. He testified that defendant carried a leather whip with metal balls on it and frequently saw him beating arriving prisoners. He also claimed defendant shot prisoners who, after escaping and then being recaptured, were hung upside down as an example to the other prisoners. Turowski described defendant in 1942 as having specific eyes that were "slightly Chinese looking" and that defendant was a non-commissioned officer who spoke "bad German" and was called by name by the SS personnel. Turowski claimed there were no Volksdeutsche at Treblinka but that Biedermann was the leader of the "Ukrainian" guards and that Rohoza was not a leader of an Ukrainian unit.

The second witness, Schalom Kohn, testified that defendant beat him with his whip on two occasions and he saw defendant beat other Jewish prisoners at the arrival of the transport. He also testified he saw defendant beating prisoners at the lazaret.

Kohn described defendant as "mean-looking" and when he walked around the courtroom there was the same "mean-looking" face; that was his explanation for being able to identify defendant in the courtroom.

Josef Czarny, clearly the least credible of the survivor witnesses, testified that at the arrival of every transport he saw defendant beating people as they emerged from the cars, and that he saw defendant on one occasion shoot a prisoner at the lazaret. Czarny claimed to have seen defendant at every one of the twice-daily assemblies, and that there were no other Ukrainians at the daily assemblies.

Mr. Gustaw Boraks was the last of the survivors witnesses who worked in Camp 1, the receiving area where the lazaret was located. He was the most candid and credible of the survivor witnesses. Boraks testified he would go to the arrival of the transport two or three times a week to look for friends or relatives and saw defendant there although he had only a few minutes to stay in that area. He never saw defendant hitting prisoners or had any personal confrontations with him.

From his position in the barber shop nearest the door at the end of the barracks where the women had to undress, he heard a shot one day. Boraks rushed to the

Footnotes continued from last page

Mr. Gold and the members of the orchestra were, of course, working prisoners. A well was nearby but it was dry.

In view of the relatively small number of SS and Soviet guards, even though well armed, compared to the large number of labor prisoners and arriving prisoners, the system of ruses, beatings, and humiliation apparently was to assist the SS in maintaining order by keeping the arriving prisoners confused and bewildered and thereby docile. In addition, it also prevented organization among the prisoners which might have resulted in a charge en masse by the prisoners. Only the prisoners arriving after the ghetto uprising in Warsaw in the spring of 1943, for example, refused to doff their clothing upon their arrival.

A grisly establishment was camouflaged and identified as a lazaret, meaning first aid station. The working prisoners were also at the entrance of the lazaret bearing Red Cross armbands and a Red Cross flag flew over the entrance. Another cruel ruse: it was a charnel house.

The purpose of the lazaret was to receive and liquidate the aged, the crippled and children without parents. These persons were separated from the rest of the arriving prisoners and taken to the lazaret which had a bench on the bank of a pit three meters deep and approximately 20 meters long and 10 meters across. After being stripped the prisoners were seated on the bench and were executed by being shot in the back of the head; their bodies would fall into the pit. A fire was kept constantly burning in the pit to dispose of the corpses.

The other arriving prisoners were separated into groups of men and women; the men were ordered to remove all their clothing in the open "square". The clothing was processed by the working prisoners and the camp was described as having "mountains of shoes" and "mountains of eye glasses".

The female prisoners were herded into a barracks where they were ordered to disrobe; they then filed into a barber shop set up at the end of the barracks where 20 men served as barbers. Each barber had about one minute to cut as much hair as possible from the head of each woman. Apparently the hair was used for various products as well as being steam cleaned in an effort to find if any valuables were hidden there. From the barber shop the women were herded out onto the path and both men and women made to run to Camp 2 where the gas chambers were located, referred to as "baths".

As final sardonic actions, the path to Camp 2 was termed by the SS "himmelweg"—the road to heaven. And on the gas chambers in Camp 2 was painted the Star of David.

Treblinka—bleaker than Bruegel's *Triumph of Death*. The death toll? One million victims, according to one witness.

door and saw defendant, the SS and other Soviet guards and a woman who had been shot in the shoulder. He did not see Fedorenko shoot her but testified that defendant had a revolver in his hand and was closer to the woman than anyone else. He subsequently cut the woman's hair before she was sent to the gas chamber; she told Boraka that she had been shot because she did not want to undress. He didn't know who shot the woman and the woman said she didn't know who it was either. He further testified that defendant did nothing wrong in the barracks with the women who were undressing. He testified he had seen defendant chasing people on the pathway to Camp 2 a few times and he knew it was defendant because he wore a black uniform while the others wore khaki. He testified that Fedorenko was some type of leader of the Ukrainian guards.

Two witnesses testified about working in Camp 2, where the gas chambers were located. The first, Sonja Lewkowicz, testified that defendant had a long and terrifying face and that she saw him in Camp 2 many times. She testified that on one occasion she saw him from a distance of 20 meters shoot a Jewish prisoner in Camp 2, but when she realized what was happening quickly turned her head. She never remembers defendant being at the twice-daily assemblies and never remembers seeing him beat or mistreat any prisoners other than the shooting incident.

The last of the survivors witnesses, Pinchas Epstein, was a witness with considerable intensity showing on his face; he testified he saw defendant beat Jewish prisoners and that on one occasion defendant shot and killed a friend of his named Laibel from his home town. On direct examination he described the incident as having occurred when Laibel's partner was returning alone from dumping a corpse into one of the pits in Camp 2.

On cross-examination Epstein stated he was Laibel's stretcher-bearer partner on the day Laibel was shot. That answer was completely inconsistent with his testimony on direct; upon his realization of that he began to squirm and fidget in the witness stand. In addition, Epstein did not mention to investigator Martin Kolar the matter of the shooting of his home-town friend or of any of the beating incidents attributed by him to defendant despite a three hour conversation with Kolar. Epstein acknowledged that Kolar told him at the interview that the purpose of the interview was for testimony against Fedorenko.

Defendant's testimony was basically a denial of all charges. He contended he was a *wachmann*—a sentry or guard—not a non-commissioned officer. He testified that he was never in the barracks with the women undressed; he was only at the arrival of the transport on one or two occasions and did not know what was going on at the camp. At least the latter is not credible to this court, neither in content nor from the manner in which the testimony was given. Defendant was far from convincing in his manner of speaking and appearance when he testified about unawareness of what was going on at Treblinka. (That testimony was in distinct contrast to his usual earnest testimony where he often volunteered extra items in his answers.) He testified he patrolled the fence as a guard and served in the tower. He testified he only served as a sentry outside of Camp 2 one day and saw what was going on, and reported to his *zugwachmann*—whom he identified as Rohoza—that he couldn't eat or sleep and didn't want to go back to that post again. He denied participating at all in Camp 2 or ever being near the gas chambers.

The phrase most constantly used throughout the trial was *zugwachmann*. The survivors were all convinced and all testified that *zugwachmaenner* were leaders among the Ukrainian or Soviet guards and that defendant was one.¹³ The word does not translate easily and despite the request of the court for any source of material providing a translation, none was offered. The survivor witnesses claimed that defendant was a *zugwachmann* because he had one or two stripes on his shoulder. Defendant explained the stripes away as being good conduct awards because he didn't walk around dirty or get drunk.

The Government offered no expert testimony on the rank-structure and testimony of their expert witness, Mr. Kempton Jenkins, didn't quite touch on the subject. His testimony about the camps was consistently inaccurate.¹⁴

Defendant's description of who was a *zugwachmann* at least fits a logical pattern. He characterized *zugwachmaenner* as being *Volksdeutschers* because the *Volksdeutschers*, who were of ethnic German background, ability to speak both German and Russian or Ukrainian enabled the SS to use the *Volksdeutschers* as *zugwachmaenner* to transmit orders. From the evidence the chain of command in a descending order went as follows: SS (*Schutzstaffeln*); *Volksdeutschers* as *zugwachmaenner*; Soviet, basically Ukrainian, guards; working prisoners with a Nazi-imposed hierar-

¹³ Apparently, *zugwachmann* is the leader of a group of guards or sentries and the group is the size of a squad (could be as large as one-third of company). See Heath's *German Dictionary*.

¹⁴ For example, see text at page 36.

chy of a head kapo, kapos, vorarbeiters (foremen), and regular working prisoners. There is nothing in the evidence to suggest that Fedorenko is a Volksdeutscher¹⁴ and there is nothing in the record from his background or education to raise the slightest suspicion that he could have learned more than a few words of German.

Fedorenko's testimony that only Volksdeutsche qualified as zugwachmaenner is supported by the berthing and messing arrangements at Treblinka. The SS didn't let the Volksdeutsche sleep or eat in the same barracks with them. Instead, the Volksdeutsche were permitted to sleep in a separate barracks—apparently giving them some privileges because of their German background—but were required to eat with the Soviet prisoner-guards, facilitating supervision of the guards by the zugwachmaenner.

The court specifically finds defendant was not a Volksdeutscher and not a zugwachmann.

PHOTO SPREADS

In view of defendant's assertion that he was only a perimeter guard who didn't commit any atrocities at Treblinka, the issue of identification is the heart of this case. The witnesses' identifications of defendant as the perpetrator of the crimes described were based on recognition of his photo and his person in the courtroom. In view of the passage of 35 years from the date of the incidents, the court must scrutinize these identifications and the circumstances under which they were made with great care.

The subject of pretrial and in-court identification and their reliability have received thorough attention by the courts in criminal cases. This attention has been focused on the dangers that pretrial identification may taint or make unreliable subsequent in-court identification. Thus to preserve the integrity and fairness of pretrial identification procedures, courts have imposed on their use certain requirements of due process. See, e.g., *Neil v. Biggers*, 409 U.S. 188, 93 S. Ct. 375 (1972); *Stoval v. Denno*, 388 U.S. 293, 87 S. Ct. 1967 (1967), *Foster v. California*, 394 U.S. 440, 89 S. Ct. 1127 (1969).

Although the instant case is a civil case, the concerns of the Supreme Court regarding the reliability and probative value of identifications made in criminal cases are no less applicable here. Thus the court turns to those cases to determine what weight to give the testimony in this case in view of the circumstances surrounding the witnesses' identifications.

The problems inherent in the use of photo spreads as a pretrial identification procedure were pointed out in *Simmons v. United States*, 390 U.S. 377, 88 S. Ct. 967 (1968). In the usual case, where a witness has not had an opportunity to get a good look at a criminal under favorable conditions, there is a danger of misidentification of a photograph, even under the best of circumstances. This danger is greatly increased when the photograph is placed in a photo spread in such a manner that the witnesses' attention is drawn to it because of its size, color placement or other distinguishing mark. Thus while the Court recognized that use of photo spreads was necessary in police work, it held that a conviction based on an in-court identification following a pretrial identification would not stand if the photo spread was so unduly suggestive as to foster "a very substantial likelihood of irreparable misidentification." 390 U.S. at 384, 88 S. Ct. at 971. Cases following *Simmons* have therefore followed a two-step formula in determining the admissibility of an in-court identification based on an out-of-court photo spread: "... (1) whether the procedures followed were 'impermissibly suggestive', and then (2) whether, being so, they created 'a substantial risk of misidentification'". *United States v. Henderson*, 489 F. 2d 802, (5th Cir. 1973).

With a time interval of 35 years, rather than days or a few weeks as in the typical criminal case, the threshold of what suggestibility becomes impermissible must necessarily be lowered. The court cannot find a decision considering the

¹⁴ The court considered the possibility that defendant's mother was an ethnic German. The first (Christian) name, Anna, is not an infrequent one both among German and Russian names. Defendant consistently listed his mother's maiden name as Hubar. The court's very limited familiarity with the German language doesn't cause any suspicion that the surname, Hubar, is a German name. However, on defendant's application for citizenship her name is spelled H-u-b-e-r; that spelling is in red ink and those notations were added by the Immigration and Naturalization Inspector Zimon. Notice can be taken of library resources which indicate that the name is a Ukrainian rather than German name; for example, O. Hubar has been cataloged by the Library of Congress as the author of a work on Ukrainian literature.

Even if defendant's mother were an ethnic German, there is nothing to indicate that his father was an ethnic German. It seems highly doubtful—and speculative at most—to assume the German language was spoken in the Fedorenko home, at least before the father's death. Far more importantly, the evidence overwhelmingly rebuts any such speculation.

question with a time lag of many years' duration. The Supreme Court did observe in *Neil v. Biggers*, 409 U.S. 188, 93 S. Ct. 375 (1972) that a lapse of seven months between the event and the confrontation "... would be a seriously negative factor in most cases." *Id.* at 201; *Id.* at 383. In the instant case where there is a gap of almost 35 years between the event and the witnesses' ability to observe the suggestive photo spreads, the photo spread should have been as clinically impartial as humanly possible to construct.

Prior to giving testimony in this trial, each survivor-witness was interviewed in Israel by the Israeli police concerning events at Treblinka. Each was shown a group of photographs and asked if they recognized anyone.

The photo spread (Government's Exhibit 17) was prepared by Maria Radwiker, an Israeli attorney who worked as an inspector investigating Nazi crimes from January 1965 until her recent retirement in January of this year. She showed only the first three pages of the photo spread to witnesses Turowski and Czarny and all six pages to Kohn. Mr. Boraks was shown only page 3 of the exhibit, Ms. Radwiker's successor, Martin Kolar, showed witness Lewkowicz pages 2 and 3 of the exhibit and only page 3 after a three hour interview to witness Epstein.

Only two of the photographs of the photo spread are claimed by Ms. Radwiker to be guards who were at Treblinka—No. 16 and No. 17. Page 3, which was shown by itself to several of the witnesses, contains 8 photographs, numbers 10 through 17. Not only is each of the first six smaller than either No. 16 or No. 17 but each is also blurred, shadowed or otherwise indistinct. By contrast, photographs No. 16 and No. 17 are both much larger than the other photographs and are the only clear ones. Not only is defendant's photograph larger than the others but it is also unnecessarily so: along each side is a superfluous black border approximately one-half inch in width. At the very minimum, it should have been trimmed to reduce the size of the picture.

A review of the first two pages reveals more blurred or otherwise indistinct photographs. The only one with any clarity is No. 9, and it is smaller and less clear than either No. 16 or No. 17.

All six of these witnesses escaped from Treblinka during the uprising on August 2, 1943. Several of the witnesses had trouble identifying defendant's photograph in the sense that it took one to five minutes to do so. For example, Boraks took one to two minutes to identify photograph No. 17 although he had looked at the same photo spread in an interview earlier that same day where the investigators were investigating No. 16; witness Epstein looked at the picture four to five minutes after a three-hour interview and identified the person as a *zugwachmann* but couldn't remember his name. Turowski testified that he immediately recognized the person in picture No. 16 (not Fedorenko). Ms. Radwiker indicated to him that No. 17 was Fedorenko and asked if he recognized Fedorenko; Turowski testified that after awhile he came to the conclusion he recognized him.

The Government only asked the first three of the witnesses to identify defendant in the courtroom, a subject which will be discussed in detail subsequently.

Kolar testified that in Israel the showing of three photographs is sufficient and Ms. Radwiker defended her manner of presentation of the photo spread as "my method."

Considering all circumstances surrounding the photo identifications, it seems clear that the makeup of the photo spread in this case is impermissibly suggestive. There was no reason at all for the Israeli investigators to set up the photo spread in the suggestive manner in which it was done. Perhaps the explanation given by Mr. Kolar that only three photographs are required in Israel provides the answer to why it was done in this fashion. However, the photo spread simply does not pass muster under American law.

The court must conclude not only was the photo spread impermissibly suggestive but it also led to a substantial act of misidentification for the three witnesses who attempted courtroom identification. It also tainted testimonial identification of defendant, critical because of the serious question whether the survivor-witnesses were describing defendant or another Russian at Treblinka.

COURTROOM IDENTIFICATION OF DEFENDANT

Turowski, the first-survivor witness, was asked to identify defendant in the courtroom on direct examination. He stood up in the witness stand and looked around the courtroom for forty seconds. The Government counsel asked if the witness could come down from the witness stand to make an identification, if possible. The witness stepped down from the stand and took only one minute to make an identifi-

cation of a middle-aged spectator sitting in the last row of the courtroom.¹⁴ Apparently sensing from the crowd reaction he had blundered, the witness backed away from the gentleman he had identified, then moved around the courtroom and in exactly another minute identified defendant.

The courtroom is square, approximately 40 feet to a side. Defendant sat approximately 22 feet from the witness stand, with his lawyer and associate, ages 30 and 26 respectively and translator, under 30. At the Government's counsel table sat four lawyers, whose ages ranged from 31 to 36.

The second witness Kohn never once looked at the spectators' section when asked to identify defendant in the courtroom. At this point the court became quite suspicious that Federal Evidence Rule 615 excluding witnesses, invoked by defendant at the beginning of the trial, was being violated. The court had given the instruction that witnesses were not to discuss the case among themselves. Kohn scanned only the counsel tables and easily identified defendant—not exactly a difficult task in view of defendant's age being twice that of any of the other seven persons at the counsel tables.

Czarny's performance at the witness stand was almost a carbon copy of witness Kohn in the identification of defendant, with the exception that Czarny was more theatrical.

Mr. Boraks was not asked to identify defendant and responded to questions by talking directly to his translator. His translator was located on the side opposite from defendant's location. Exactly eighteen minutes after he took the witness stand Boraks quickly turned more than 90 degrees to look directly at the position where defendant was sitting and without ever scanning the courtroom he quickly looked back to the interpreter.

The court was convinced the witnesses were discussing the trial among themselves, at least; and at worst someone was coaching them. Defense counsel had made the motion to sequester witnesses at the beginning of the trial but had not objected to Ms. Radwiker remaining in the courtroom and sitting directly behind Government's counsel table after she had finished her testimony. Defense counsel now insisted the rule be enforced and that she be excluded from the courtroom; the court enforced the motion and excluded Ms. Radwiker from the courtroom for the remainder of the trial.

The in-court identification of defendant by the three witnesses would have been rather weak under any circumstances because of the obvious location of defendant (obvious except to Mr. Turowski) and the great difference between his age and that of the other seven persons at counsel tables plus defendant was the only one with a translator. However, because of the obvious discussion of the case by the witnesses in violation of the rule, the court rejects the in-court identification in toto.

IDENTIFICATION OF DEFENDANT

In addition to the grave identification deficiencies of the Government's case, there are many other grave flaws in the identification testimony of the Government's witnesses as well as the credibility problems. Perhaps it is understandable that, there are flaws in identification evidence after 35 years. That is part of the difficulty the Government faced in trying to meet its burden of proof. Among the more obvious identification flaws: Turowski described defendant as "slightly Chinese-looking". However, defendant Fedorenko simply does not look Oriental. He doesn't now and he didn't in the picture attached to his visa application.

Kohn described defendant as "mean-looking", and when he walked around the courtroom there was the same "mean-looking" face. That was his explanation for being able to identify defendant in the courtroom.

Czarny testified that he could identify Fedorenko when he walked around the courtroom because there was the "same mean-looking face". After the two days of testimony in Connecticut before beginning the Fort Lauderdale portion of the trial, and also at the close of all the testimony, the court concluded that defendant had a kind-looking, not hard-looking face, somewhat courtly in appearance. In no way can this court conclude he has a mean-looking face at this time.

Czarny also emphatically identified defendant's exhibit No. 3 as Fedorenko and announced he could never make a mistake. Of course the photograph was not

¹⁴ Turowski and each of the six survivors at Treblinka also testified at a trial in Dusseldorf in 1965 against 11 SS personnel. Most also testified in Dusseldorf in 1970 against Stangl, the Commandant at Treblinka. The court noticed that, according to the news article carried in the Miami Herald, May 31, 1978, describing Turowski's error, at the Dusseldorf proceedings the German court would locate defendants among the spectators in order to test the identification ability of the witnesses.

Fedorenko." Boraks identified Fedorenko as being the only Soviet guard who wore black, completely contrary to the testimony of all the other witnesses about the uniforms worn by the Soviet guards. Witness Lewkowicz quickly looked away after the only incident when she described the atrocity allegedly committed by Fedorenko.

Epstein talked for over three hours in the interview with Israeli investigator Kolar but never mentioned anything about Fedorenko. He had trouble in identifying Fedorenko even from the suggestive photo spread. In addition to the inability to remember the alleged shooting of his hometown friend, whom he claimed was his stretcher-bearer partner, he was squirming when he realized he had blundered into an indefensible inconsistent description of the event. His testimony against Fedorenko simply lacks credibility.

Fedorenko's cross-examination perhaps supplied the missing piece in the puzzle when the Government's counsel persisted in asking defendant to describe his zugwachmann Rohoza. Fedorenko testified that Rohoza was "just like me" in height and his hair color was "just like mine." The persistent questioning about Rohoza's appearance elicited this response: "... like my face, almost like my brother." And to a further question, that the resemblance between the two was such they looked like brothers. The court watched Fedorenko even more closely than usual when that line of questioning began and the court is firmly convinced that the answers were given guilelessly. From observation of his testimony and demeanor the court concludes defendant is unsophisticated—and perhaps feeling some affects of being in his eighth decade (e.g., see p. 1419 of transcript). The court doubts defendant is aware at this time of the exculpatory nature of the answers.

At the close of cross-examination the courts asked questions of defendant for 50 minutes. Although defendant denied committing the atrocities during direct-examination, the court wanted the key answer from defendant face-to-face without the necessity of any translation. Confident that its location in the questioning would not favor or disfavor defendant and confident that defendant understood the question completely, the court instructed the translator to ask the question whether defendant had done any of the shootings and beatings of prisoners as testified to in the courtroom and instructed defendant to "Please look at me, tell me either nyet or da, did you?"

From about 10 feet away with unobstructed eye contact defendant's answer was sincere and strong: Nyet.

The court considered the answer credible.

Even without defendant's testimony, the Government's evidence on the claimed commission of atrocities by Fedorenko fell short of meeting the "clear, convincing and unequivocal" burden of proof. In fact, the court should have granted a motion for involuntary dismissal on those particular counts at the close of the Government's case. With defendant's testimony the Government's evidence fell woefully short of meeting the burden. The evidence left the court with suspicions about whether defendant participated in atrocities at Treblinka but they were only suspicions.

EXONERATION TESTIMONY BY RUSSIAN WITNESSES

At the beginning of the Fort Lauderdale proceedings, defendant filed a motion for continuance claiming that there were six witnesses in Russia who could give exculpatory testimony. Defense counsel asserted that defendant had just brought these matters to counsel's attention because of his difficulty in communicating with defendant about the nature of the charges.

Defendant has been back to the Soviet Union three times in the 1970's: once in 1972 "as a tourist"; again in 1973 for approximately three months and in 1975 for a period of 50 weeks. In late September or early October of 1973, several weeks before his departure from the Soviet Union in November, defendant asserts the Soviet Union investigated him to some length concerning his status in World War II and activities at Treblinka. A Russian Colonel asked questions of him on three different days, for a period of six hours on one occasion. The only other witness he saw was a

"Czarny exhibited a number of other credibility flaws. He would become more theatrical when he was aware the court was watching him closely. His facial expressions would become more dramatic especially during his courtroom identification of defendant and his testimony after lunch on re-direct about his previous mis-identification of exhibit No. 3 as being Fedorenko. Further, the witness clearly understood a number of questions in English but specifically denied any knowledge of understanding the English language, even to the court. This despite answering questions on more than one occasion without the benefit of a translator. One of those questions contained more than ten words. Witness Epstein also obviously understood English but denied it (also to the court) although this knowledge may not have been as extensive as Czarny's.

witness named Kuzmienko who was only interrogated for five or ten minutes. He said the Russians came for him in a car and took him to the city of Siemferopol in the Crimea. He claimed that the Russian investigation cleared him of any wrongdoing and that they had taken statements of the six persons, Nikolai Korotkey, Wasyl Wasylenko, Michael Dudnik, Petro Schelno, Ivan Schevchenko and Nikolai Rohoza, whose testimony he wanted to obtain for this trial. Defendant sought a continuance in order to obtain the testimony or evidence of these six persons, five of them guards at Treblinka as well as Rohoza, defendant's zugwachmann. The court urged both sides to begin immediately to obtain more information about the potential witnesses and the procedures available and necessary to obtain the evidence from them.¹⁴

At a post-recess hearing one evening after two weeks of trial and the Government not having rested its case, the court commented during colloquy on scheduling and the motion for continuance that it felt it was necessary in the interests of fair trial to give defendant an opportunity to present the testimony of these witnesses to corroborate his denial or claim of involuntariness. The court emphasized that it might be able to decide the case without the continuance but also recognized that, because of the uncertainty about obtaining testimony from the Russian witnesses, it might take years to obtain the testimony and decide the case.¹⁵

If the Soviet Government conducted an inquiry in 1973 and cleared defendant of any complicity in war crimes at Treblinka or of collaborating with the Nazis, such a proceeding would be interesting to muse about but it would not be admissible *per se* in an American court. The fact such an inquiry was held is indeed curious, particularly because defendant testified that amnesty was given by the Soviet Union in 1955. Edict on Amnesty for the Soviet Citizens Who Collaborated With the Occupying Powers During the Great Patriotic War 1941-1945, *Vedomosti Verkhovnogo Soveta SSSR* [official law gazette of the USSR] No. 17, at 345 (1955). Defendant volunteered this information. The court has concluded that it is not necessary to obtain the testimony of the Russian witnesses in order to decide the case.

¹⁴The court suggested that the most preferable means would be by an evidentiary hearing with the court sitting as a special master although that apparently is precluded at this point by the resolution of the Judicial Conference. Of course, this cannot be done without the approval of the Soviet Government; however, the Soviet Government has given permission for a West German court to conduct hearings in the Soviet Union of Soviet witnesses in connection with West German trial of various defendants for alleged atrocities at Majdanek, Poland. See *Miami Herald*, May 28, 1978.

In view of the courts's prior order virtually demanding the use of live witnesses from Israel rather than deposition testimony, the court felt it would be unfair to defendant if the obtaining of such testimony for defendant were to be limited to depositions or written interrogatories in presenting his corroborating testimony.

Next to an evidentiary hearing, the next most helpful means of presenting the evidence would be by video deposition but that possibility seems remote at best. Under the circumstances depositions by oral examination would have been the best feasible method and the least helpful would be depositions upon written interrogatories under letters rogatory. However, written interrogatories apparently are the only likely method of obtaining testimony from witnesses of the Soviet Union, per advice of the Administrative Office of the United States Courts which was communicated to counsel.

Of course, no fellow Russian or Ukrainian who was at Treblinka and now in the United States is about to come forward to testify. This is particularly true because the instant case reputedly is the first of many against East European prisoner-guards now in the United States. Sec., e.g., *Miami Herald* article, p. 1, dated July 20, 1978.

¹⁵The court felt an announcement had to be made to counsel in order to obtain maximum haste on their part in getting the testimony or whatever evidence could be obtained from the Russian witnesses.

The spectators had left the courtroom by the time of the hearing, and that seemed an appropriate time for the court to make its comment. The court was aware that the Jewish Defense League members were in attendance in the courtroom as spectators; the court was also aware that, when an Administrative Law Judge announced a continuance to permit the government to obtain more evidence in a deportation hearing in Baltimore of an alleged ghetto guard in Latvia, the Jewish Defense League had staged what can be described as a riot in the courtroom. See news article, p. 6E, *Fort Lauderdale News* dated Dec. 4, 1977.

The court was well aware of the emotional nature of the issues in this case and wished to assure the citizens in South Florida that any such continuances would not be one of indefinite duration even though it might take many months and perhaps well over a year. The court attempted to communicate that matter but the attempt was either misconstrued or too little, too late. The misinterpretation of the length of a possible continuance apparently stimulated the Jewish Defense League into printing and handing out leaflets by the following afternoon demanding the disqualification and impeachment of the trial judge.

POST-TREBLINKA

Following the uprising at Treblinka, Fedorenko and other Soviet prisoner-guards were transported by the SS back to Travnicki in different groups. One of the groups killed a German officer and fled after no other prisoner-guards would join them.

After a few days in Travnicki defendant was transported to Danzig with about 80 or so other prisoners, including Russians, Ukrainians, Byelo-Russians and Poles. Defendant served there as a guard for approximately eight months; the camp at Danzig was not a death camp. Defendant was then transferred to Poelitz, a prisoner-of-war camp where many prisoners died from starvation. At Poelitz he was used as a guard but never left the camp; defendant claimed the Germans didn't trust him and the others who were transferred to Poelitz, probably because the Russian army was getting closer. After five or six months at Poelitz defendant was transferred to Hamburg where he was assigned to guard produce and warehouses. After a short period of time the British occupied Hamburg; defendant worked for the British from 1945 to 1949.

In Hamburg defendant had a work uniform and an after-hours uniform. He described better conditions under the British: he received good food and 100 marks per month.

In 1945 the prisoners of the British were required to register and defendant listed his birthplace as Sarny, Poland because every Russian citizen had to return to the Soviet Union. He selected the town of Sarny because some friends suggested it. Defendant used his correct name and birth date on the registration, visa applications and relevant documents for naturalization.

The testimony of a fellow-inmate of the camp in Hamburg indicates there were about 1,000 persons there; all were Polish except 200 to 300 Russians, mostly Ukrainian, and the camp was supervised by Polish officers. When Russian investigators came seeking Russians for repatriation, Polish officers protected the Ukrainians and Soviet residents by advising the Russians that all residents of the camp were Polish.

Defendant feared repatriation as did the other Soviet citizens at the camp. One witness testified that thousands committed suicide rather than be repatriated to the Soviet Union.²⁰

While residing at the displaced persons camp at Osdorf near Hamburg, defendant applied for an immigration visa giving his correct name and date of birth, listing his place of birth as Sarny, Poland. In his history, considered by the Displaced Persons Commission, the same information was given together with some additional information: that he was a member of the Greek Orthodox faith and received his education at Sarny consisting of elementary school from 1915 to 1918. In addition he contended he was a farmer at Sarny until March 1942 when he was deported to Germany and employed as a worker at Poelitz.²¹ A typist who evidently spoke English but not German mistakenly typed Pelez rather than Poelitz in both places it appears on the Displaced Persons Commission report. Clearly a German location could not be spelled Pelez and the court must presume that the case analyst and reviewing persons on the Displaced Persons Commission and, more importantly, the reviewing Vice-Consul knew Poelitz was a German location, particularly because it was identified as being "near Stettin." Jenkins testified vice-consuls received several months of German language training.

Defendant's application for a visa was executed before the Vice-Consul on October 12, 1949 at the Consular office at Wentorf near Hamburg. He was approved by the Vice-Consul for admission to the United States under the Displaced Persons Act and arrived in America on November 5th, 1949, and went to work on a farm in Litchfield, Connecticut. Unfortunately, and inexplicably, the Government did not find the Vice-Consul who approved defendant's application.

²⁰ Defendant requested a continuance in the third week of trial in order to produce a witness who could testify that many Ukrainians committed suicide, including death by immolation, rather than suffer repatriation. The court rejected the motion for continuance on the basis the evidence would be merely cumulative.

²¹ Poelitz is spelled with an umlaut in German, viz., Pölitz. It is located slightly less than 10 miles (15 kilometers) north of Stettin, per National Geographic Society map of Germany (1944). Inasmuch as Poelitz and Stettin have been situated in Poland since World War II, it is difficult to locate Poelitz by the German spelling in most atlases. However, see p. 50 of Rand McNally's International Atlas (1969) which lists both German and Polish spellings. The name is spelled incorrectly in the transcript.

The court located a village named Pehlitz in East Germany. It is apparently too small to be listed even in detailed atlases. Its co-ordinates place it twenty miles closer to Berlin than to Stettin. From the evidence the court concludes Poelitz is the location referred to in the Displaced Persons Commission report.

On November 21, 1950 defendant filed a Declaration of Intention listing his birthplace as Sivash in the Ukraine. The same information is provided in his Declaration of Intention filed April 7, 1951.

The Government called Kempton Jenkins, a career foreign service officer as an expert witness; he was formerly a Vice-Consul reviewing Displaced Persons cases in south Germany subsequent to the time defendant came to America. Although the witness was a very engaging person, the court found a number of inaccuracies in his testimony and must therefore consider his testimony in the light all the evidence.

Any Vice-Consul had a number of materials presented to him by an applicant for a visa. At that point the applicant had been interviewed by a voluntary sponsoring group (in defendant's case the Tolstoy Foundation) and by the Displaced Persons Commission. The Vice-Consul had a report from the Displaced Persons Commission as well as one from the Army CIC (Counter-Intelligence Corps) which checked any service record with the Axis forces. In addition, a report on conduct from the local German police was furnished together with any report from the Berlin Depository Center which contained a depository of Nazi party documents.

If a prisoner indicated he was with a labor force a check was made of the records as to that labor force. In the instant case, defendant did advise them he had been at Poelitz.

Jenkins testified that the persons to be excluded under the Displaced Persons Act were ones who participated in or acquiesced in crimes against humanity or against civilians or served voluntarily with Axis military forces. He stressed that the benefit of the doubt was to be given to the applicant and the objective was to make a humanitarian solution. He testified that many applicants were members of the East European Waffen SS (Combat) divisions who claimed to be serving involuntarily. The Vice-Consul would have to decide whether to admit the applicant and testified the tendency would be to make a favorable judgment and admit the applicant. He testified that the Displaced Persons Commission and Vice-Consuls recognized that many East Europeans hated the Russians as much as they did the Germans. He also added the fact the Russians might execute the applicant was a reality that was considered. He acknowledged that some visas were granted to members of General Vlasov's army (The "Army of the Damned"), although that Army fought side-by-side with the Germans against the Russians and comprised Soviet volunteers.

Jenkins testified he knew of no camp guards whose applications were favorably processed but he admitted he only remembered three and his experience was with Dachau which was located in Southern Germany. He assumed the camps east of Germany, such as Treblinka and Sobibor, located to the east of Warsaw, would be more brutal because the German civilian population was less likely to learn of it. He also testified that thousands of Germans who were not Jewish were killed in concentration camps. The survivors' testimony about Treblinka indicates that only Jewish persons were exterminated there plus a few gypsies.

Jenkins' testimony about the structure of the death camp organization was hardly expert and conflicts consistently with other evidence presented at the trial. For example, he testified that the Ukrainian guards had the same uniforms as the SS with only slightly different insignia. However, the unanimous testimony was the Germans wore their usual gray-green uniforms but the prisoner-guards didn't. He testified that the camp guards could get leave and get away from the camp and could transfer. The testimony was clear that they could not take leave (and go to Berlin, as Jenkins opined) but could only get a two-to-four-hour pass to visit a small village a couple of miles away.

The testimony of defendant refutes the assumption that the camp guards could transfer to other duty. Jenkins also testified that the Germans commandeered all the best houses and the camp guards had excellent living conditions, had movies and were well-fed. There was no evidence about the quality of the meals or about movies in the camp but Soviet prisoner-guards lived in barracks rather than in "the best houses".

Jenkins also would have considered the kapos as excludable because they assisted the Germans. This is totally contrary to the reaction of every witness who survived Treblinka; each of the Israeli witnesses testified the kapos did only what they had to do and the witnesses were quite indignant when asked if they had ever testified against the kapos. The witnesses replied that there was no reason to do so. In addition, Jenkins speculated that the kapos were probably shot in 1945 during a period of retaliation, but the testimony was to the contrary.

The Constitution of The International Refugee Organization described in part II of Annex I "Persons who will not be [considered as displaced persons]." Under the second listing are two classifications:

2. Any other persons who can be shown:

(a) to have assisted the enemy in persecuting civil populations of countries, Members of the United Nations; or

(b) to have voluntarily assisted the enemy forces since the outbreak of the second world war in their operations against the United Nations.

It has troubled the court that the word "voluntarily" appears in connection with service with the Axis military forces but is deleted from the phrase in section 2(a). The concern arises because the traditional principles of statutory construction would hold that the deletion of the word "voluntarily" in one subsection while its inclusion in another compels the conclusion that any assistance, whether voluntary or involuntary, in connection with concentration camp treatment of civilian population would be sufficient to bar that person from being entitled to relief under the Displaced Persons Act. The difficulty with that construction is that it would bar every Jewish prisoner who survived Treblinka because each one of them assisted the SS in the operation of the camp. Each did so involuntarily and under the utmost duress. For example, working prisoners led arriving prisoners to the lazaret to be executed; or wore armbands as part of the ruse at the lazaret; or cut the hair of the females to be executed; others played in the orchestra at the gate as part of that ruse, etc. Technically, this is assistance. It is also absurd to deem their conduct as "assistance or acquiescence" inasmuch as it was involuntary—even though the word "voluntarily" was omitted from the definition.

The Government listed witnesses who were Treblinka survivors and now reside in America, presumably as U.S. citizens. To interpret "assistance or acquiescence" without requiring it to be done "voluntarily" could imperil their status.

The Government's expert witness, Mr. Jenkins, opined that he would bar kapos from the benefits of the Displaced Persons Act because of their assistance to the SS in supervising the activities of the other Jewish prisoners. Unanimously the survivors of the Treblinka prison camp defended the actions of the kapos. They pointed that the kapos had administered beatings at the command of the SS with just enough strength to avoid getting themselves into trouble with the SS while not being severe enough to injure the prisoner. Here again, if the word "voluntarily" is not read into subsection 2(a) kapos also would be denied admission under the Displaced Persons Act.

To construe the definition in that fashion would be to thwart totally the most obviously deserving persons: the prisoners who survived death camps such as Treblinka.

WAS FEDORENKO'S GUARD DUTY VOLUNTARY?

The court has previously found Fedorenko did not volunteer to go to Travnicki and did not volunteer to be a guard at Lublin or Treblinka. Nor did he volunteer for Warsaw, Danzig, Poelitz or Hamburg.

The question still remains whether Fedorendo could have made some feasible choice other than serving as a guard, particularly at Treblinka. The court has already found that defendant could not have transferred to another division.

Fedorenko had rights that the typical prisoner of war does not have, for example: carrying a rifle and a pistol, being able to go on liberty for four hours and even being given some small stipend from the Germans. On the other hand, he clearly did not have the right to walk out of the gate, go to a city of his choice, or catch a train to his home or wherever else he wanted to go. Although not a typical prisoner of war, he was clearly not one of the captors. He was in some limbo state of having privileges not usually conferred on a prisoner of war but still in a position where disobedience of any consequence or an attempt to escape would certainly result in death.

The privileges given to the Soviet prisoner-guards apparently were to mollify them enough to prevent disciplinary problems and also to prevent their revolting against their captors. The use of liberty for four hours to visit a nearby town seems calculated to keep the prisoner-guards contented while preventing their getting a safe headstart if they decided to escape. Defendant testified that four of them did try and were surrounded by the Germans in a house and apparently executed. Approximately 15 prisoner-guards attempted to escape from Treblinka and defendant was unaware of what happened to them other than the four. One prisoner-guard was executed for disobedience and all the prisoner-guards were compelled to watch.

At the time of the uprising on August 2, 1943 defendant and the other prisoner-guards near him fired over the heads of the prisoners under orders from the Commandant.²² Defendant did not fire at any of the prisoners and the court doubts that he did anything other than shoot over their heads.

²² When asked on cross-examination why he didn't shoot the commandant, he replied: "If you shoot the commandant, it is like shooting yourself."

With the benefit of hindsight seated in a comfortable chair in an air-conditioned office it would be relatively easy to conclude that defendant should have turned his rifle on the SS on the day of the uprising or that he should have attempted to escape once he got to the nearby village. Defendant testified he discussed escape once with a fellow prisoner-guard but nothing further came of it.

However, the Code of Conduct for Members of the Armed Forces of the United States Imposing a Duty to Escape (Section III) was not promulgated until Executive Order No. 10631 dated August 17, 1955, after the Korean conflict. Previously with American military forces there had been only an unwritten tradition to escape although apparently a written duty was once published in 1863. No evidence was presented that defendant was under a Soviet duty to escape or that he had been so instructed in the few, presumably disorganized, days between Russian mobilization and his capture.

If Fedorenko had refused to carry out orders at Treblinka, there is little doubt from the evidence that his execution would have been swift and sure. It no doubt would have occurred before a formation of other prisoner-guards to serve as an example to them. For a prisoner-guard at Treblinka to have denounced publicly the SS and what they were doing there would indeed have been a dramatic act of decency. It also would have been a dramatic act of self-destruction. As a court of equity, this court cannot impose such a duty upon defendant.

CONCLUSIONS OF LAW

Based on the findings set forth the court now considers each count of the complaint.

There is no dispute that defendant lied when he gave his birthplace as Sarny, Poland and stated he worked in a factory in Poelitz, Germany. This misrepresentation would have been cause to deny defendant's application for citizenship. *Berenyi v. District Director, Immigration and Naturalization Service*, 385 U.S. 630, 87 S.Ct. 666 (1967). *In Re Petition of Haniatakis*, 376 F. 2d 728 (3rd Cir. 1967). However, in a denaturalization proceeding a different standard obtains. Despite the fact that the immigration laws prohibit giving of false answers²² and that therefore any misrepresentation is "illegal", once citizenship has been confirmed it may be taken away only if it can be clearly and convincingly shown that the misrepresentation was "material." *Chaunt v. United States*, 364 U.S. 350, 81 S.Ct. 147 (1960). Although *Chaunt* considered only the question of obtaining citizenship through "willful misrepresentation of a material fact", the court finds that the standard must be the same where the charge is "illegal procurement" by virtue of a false statement. See *In Re: Field's Petition*, 159 F. Supp. 144 (S.D.N.Y. 1958).

In *Chaunt* the Supreme Court held that proof of materiality requires clear and convincing proof that either (1) facts were suppressed "which, if known, would have warranted denial of citizenship" or (2) that their disclosure "might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship" 364 U.S. at 355, 81 S.Ct. at 149.

In the instant case the true facts regarding defendant's birthplace and nationality would not of themselves have justified denial of citizenship, for Ukrainians per se were not excluded under the Displaced Persons Act.²³

Neither can the court conclude that the disclosure of these facts might have been useful in an investigation leading to the discovery of other facts possibly warranting denial of a citizenship. In fact, the truth regarding defendant's nationality and birthplace were revealed to the Government when defendant filed his Declaration of Intention in 1950 and again in 1951. Mr. Zimon, who interviewed defendant pursuant to his application for citizenship, testified that the disclosure of the previous false statement was not a cause for concern or further inquiry because it was a well known fact that many Ukrainians entering the country at that time had concealed their true nationality in order to avoid repatriation to the U.S.S.R. Further, Mr. Jenkins admitted defendant's being a Ukrainian was obvious from his name and religion.²⁴

²² The Act of May 22, 1918, as amended 40 Stat. § 1(C) as in effect in 1949 prohibited the giving of any false statement in an application for permission to enter the United States. A similar provision in the current law may be found in Title 8 U.S.C. § 1325.

²³ Displaced persons under the Act included any person who as a result of the actions of the authorities of Nazi or Fascist regimes, has been deported from or has been obliged to leave his country of nationality or of habitual residence. This definition would include Ukrainians who were forced from their homeland during the German invasion of the U.S.S.R.

²⁴ Accord, and almost on all fours except it is an application rather than a denaturalization case: *In Re Iwanenko's Petition*, 145 F. Supp. 838 (N.D. Ill. 1956) Iwanenko came to U.S. in 1950 after defendant's arrival and the case describes the fear of repatriation in detail. Jenkins

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However, the question of defendant's whereabouts from 1942-1945 presents another matter. Defendant has admitted that he did not work in a factory in Poelitz, but instead worked as a prisoner-guard for ten months in Treblinka. However, he did serve as a prisoner-guard at Poelitz. If the Treblinka term had been known, it certainly would have prompted an investigation by the Vice-Counsel to determine whether defendant committed atrocities at Treblinka or served voluntarily as a guard, or was otherwise excludable from admission under Section 2(a) or 2(b) of the Displaced Persons Act. However, the knowledge of defendant's being at Poelitz whether as a forced laborer or a prisoner-guard would have triggered the search of the records as well.

The Government has argued that under *Chaunt* it is not necessary to prove that the facts which would have been revealed through the investigation would have required denial of citizenship; the Government contends it is sufficient that the conceded facts prevented the Government from making an investigation which might have resulted in a denial of citizenship.

The language in *Chaunt* is ambiguous. The word "possibly" in the phrase "possibly leading to the discovery of other facts warranting denial of citizenship" could be read to modify the entire phrase, thus supporting the Government's interpretation that existence of facts warranting denial of citizenship need only be a possibility. However, if this were the intent of the Court, it would have been clearer to state "facts which might warrant denial." On the other hand, it appears that the proper grammatical interpretation is that "possibly" modifies only the first part of the phrase, meaning that the existence of facts justifying denial is presupposed, and the only question is whether the suppressed facts would have provided a link to their discovery.

This second interpretation has been adopted in two circuits. In *United States v. Rossi*, 299 F.2d 650 (9th Cir. 1962), the court considered whether the fact that defendant had personated his brother, a Chilean citizen thereby suppressing his true identity as an Italian, was material. The court found that although defendant thus succeeded in avoiding the quota restriction placed on Italians, the Government had not shown that defendant would not have been admissible because the quota had been filled, and the Government therefore had not met the burden of showing that the misrepresentation was material.

The Ninth Circuit more recently adhered to this same interpretation of *Chaunt* in holding in a deportation case that a suppressed fact is not material unless the truth would have justified denial of a visa. *LaMadrid-Peraza v. Immigration and Naturalization Service*, 492 F.2d 1297 (9th Cir. 1974).

Similarly, in *United States v. Riela*, 337 F.2d 986 (3rd Cir. 1964) the court cited *Chaunt* as holding that false statements are material if they resulted in the suppression of facts which if known would have warranted denial of citizenship.

Based on its reading of *Chaunt*, this court agrees with the interpretation followed in the Third and Ninth Circuits. The case of *Langhammer v. Hamilton*, 295 F.2d 642 (1st Cir. 1961) cited by plaintiffs, is not a denaturalization case and therefore is inapposite. Compare: *Nowak v. United States*, 356 U.S. 660, 78 S.Ct. 955 (1958) with *Berenyi v. District Director of Immigration and Naturalization Service*, supra. Therefore the court must determine whether the Government has presented clear and convincing proof that the true facts would have warranted denial of citizenship.

APPROVAL OF DEFENDANT'S VISA APPLICATION

Witness Jenkins testified that a Vice-Consul's determination to approve or disapprove an application could only be overruled by the Consul General, and that overruling didn't happen. If anything in an application indicated prior service in a labor battalion or German unit there would be an investigation made to see if applicant served voluntarily.

Although defendant did not mention Treblinka in his history given to the Displaced Persons Commission he did mention his service at Poelitz near Stettin although he described it as a factory worker rather than a prisoner-guard. The case analyst signed off on the Displaced Persons Commission report on August 30, 1949. It was more than six weeks later on October 12, 1949 when the Vice-Consul at Hamburg approved defendant's application for a visa.

What happened in the intervening time? Was no inquiry made into the German records about Fedorenko being in whatever units were at Poelitz? Unlikely—Jen-

Footnotes continued from last page

claimed there was no repatriation as late as 1949 and no reason to fear it. However, the Iwanenko opinion described how rumors were still circulating among Russian nationals. Of course, defendant listed Sarny, Poland as his birthplace in 1945 when repatriation was unquestionably a peril and he was consistent in his 1949 application.

kings testified such information would have triggered an inquiry. Did the inquiry show his status there? If so, did the Vice-Consul apply the test that Jenkins had described, resolving the doubts to the benefit of the applicants? After all, doubts were resolved in favor of members of General Vlasov's army and their applications were approved. We can't be sure because the Government did not produce the Vice-Consul to testify. Not only were the doubts often resolved in favor of applicants under the Displaced Persons Act, but the Supreme Court instructs the United States Courts to resolve the law "as far as is reasonably possible" in favor of the naturalized citizen. *Schneiderman*, 320 U.S. at 122, 63 S.Ct. at 1335. Therefore this court must resolve the doubt in favor of defendant as to Counts 1, 2 and 3. This court specifically holds that petitioner lawfully entered the United States.

Count 4 of the complaint charges defendant with giving a false answer to question number 6 on the application form for citizenship (form N-400). That question asks "Have you ever committed any crime, whether or not you were arrested? Inasmuch as the court has determined that the Government has failed to prove defendant's commission of any crimes, it cannot be said that defendant's answer was not truthful. Therefore the Government has failed to meet its burden as to Count 4.

Turning now to Count 5, question number 7 asked defendant to list membership in any organizations, including foreign military service. Defendant listed only Russian military service in 1941. Mr. Zimon, the naturalization examiner who used red markings to indicate his additions, added "labor union at work" as an organization of which defendant was a member.

The Government contends that defendant willfully failed to reveal his status as an armed guard for the Germans²⁶ in response to the question.

It is clear that defendant served only in the Russian army until his capture in 1941. Defendant has maintained that he was a prisoner of war until his surrender to the British. It is clear that he was transported from place to place and was obliged to obey orders under penalty of death and was not free to do whatever he chose. In view of the evidence the court concludes that there would be strong reason in defendant's mind to view himself as a prisoner of war; it therefore cannot be said that his omission was willful. *United States v. Tooma*, 187 F. Supp. 928 (E.D. Mich. 1960), *United States v. Profaci*, 274 F.2d 289 (2d Cir. 1960). Even if defendant clearly understood the question and willfully concealed the truth, the court must necessarily hold in accordance with the previous findings that the false answer was not proved to be material.

Counts 6 and 7 charge defendant with not being a person of good moral character for the five years preceding naturalization both because of the commission of atrocities and because he lied on his N-400 form.

Good moral character is a difficult term to define. As the Supreme Court has stated, "the term, by itself is unusually ambiguous. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitude, experience and prejudices of the definer". *Konigsberg v. State Bar of California*, 353 U.S. 252, 263 (1957). Thus it has been consistently held that to meet the requirements for citizenship a petitioner's character must measure up to that of the average citizen in the community in which he resides. *Brukiewicz v. Savoretti*, 211 F.2d 541 (5th Cir. 1954). Although the immigration laws require proof of good moral character only for the five years preceding naturalization²⁷ conduct outside the statutory period is relevant and should be considered.²⁸

The evidence concerning Fedorenko's good conduct for 29 years in America is uncontroverted. In contrast, the evidence concerning defendant's conduct at Treblinka is fraught with conflict and uncertainty and is therefore inconclusive.

While it may be true that defendant was not completely candid in his interviews with Immigration officials, and that such "temporizing with the truth" should not be condoned, the court cannot find under the circumstances that defendant was guilty of the type of willful deceit which alone might justify a revocation of citizenship. It must be again emphasized that the burden is no longer on defendant to demonstrate his entitlement to citizenship. *Berenyi*, supra, but is on the Government to show clearly and convincingly that he is not. *Chaunt*, supra. The court therefore concludes that the Government has not met its burden as to Counts 6 and 7 of the complaint.

²⁶ The complaint originally charged defendant with being a member of the German Army. It was amended at the pretrial conference.

²⁷ § 316(a) of the Immigration and Naturalization Act of 1952, 8 U.S.C. § 1427(a).

²⁸ § 316(e), 8 U.S.C. § 1427(e) provides that the court may take into consideration as a basis for its determination the petitioner's conduct and acts at any time prior to that period.

THE EQUITIES INVOLVED—AN ALTERNATIVE BASIS FOR THE HOLDING

Even if the court were to find that defendant had willfully concealed material facts in applying for citizenship, the court's inquiry would not stop there. This denaturalization proceeding is a suit in equity, *Knauer v. United States*, supra, and equity demands the weighing of the rights of the parties in light of all the circumstances in order to arrive at a decision which is fair and just.

The authority of the Government to take away citizenship fraudulently or illegally procured has repeatedly withstood constitutional challenge. See *Johannessen v. United States*, 225 U.S. 227, 32 S.Ct. 613 (1912); *Schneiderman v. United States*, supra; *Luria v. United States*, 231 U.S. 9, 34 S.Ct. 10 (1913). Moreover, this right is ordinarily not subject to defenses of laches, *Costello v. United States*, 365 U.S. 265, 81 S.Ct. 534 (1961), estoppel, *United States v. Ness*, 245 U.S. 319, 38 S.Ct. 118 (1917) or res judicata, *Johannessen v. United States*, 225 U.S. 227, 32 S.Ct. 613 (1912). Of course, this does not mean that the Government's power to bring suit is not subject to any limitations. The grant of citizenship confers on the individual all the rights and privileges guaranteed by the Constitution, and the Government may not revoke that grant on the grounds that are arbitrary, punitive or discriminatory. See *Schneider v. Rusk*, 377 U.S. 163, 84 S.Ct. 1187 (1964); *Rogers v. Bellei*, 401 U.S. 815, 71 S.Ct. 1060 (1971).

The Supreme Court has held on several occasions that a certificate of citizenship shall be cancelled unless there has been strict compliance with the conditions imposed by Congress as prerequisites to the acquisition of citizenship. See *Maney v. United States*, 278 U.S. 17, 49 S.Ct. 17 (1928); *United States v. Ness*, 245 U.S. 319, 38 S.Ct. 118 (1917); *United States v. Ginsberg*, 243 U.S. 472, 37 S.Ct. 422 (1917).

However, court decisions in the area of denaturalization must be considered in light of the economic and social concerns of the times, as well as the unique facts of each case.

Early in this century Congressional concerns in the area of immigration law focused on the economic and social problems created by an influx of immigrants.²⁸ The Immigration and Naturalization Act of 1906 instituted major procedural reforms in the administration of the laws in an effort to curb the widespread abuses occurring at that time.²⁹ Thus many of the early denaturalization cases reflect the judicial concern for strict compliance with procedural requirements.³⁰

During the war and post-war era of the 40's and 50's the cases take on a different posture, as the Supreme Court was faced with denaturalization suits in which the charge of illegality almost invariably was the claim that defendant was not "attached to the principles of the Constitution."³¹

In this era the court was clearly concerned that citizenship not be revoked solely on the basis of one's political or ideological beliefs. Consequently the court began to exercise a virtually de novo right of review of lower court findings.³²

Perhaps the most striking illustration of the scope of Supreme Court review is found in *Nowak v. United States*, 356 U.S. 660 (1957) where the court virtually dismissed the testimony of the witnesses and the findings of two lower courts. This case presents a startling contrast to the standards used in considering petitions for naturalization where the burden is on the petitioner. See, e.g., *Berenyi v. District Director, Immigration and Naturalization Service*, supra.

Similarly, the Court took a very hard look at the evidence in *Chaunt v. United States*, supra in order to conclude that the Government had not proven the significance of three minor arrests for membership in the Communist party, all omitted from defendant's application for citizenship.

In the late 50's and early 60's courts were faced with another category of cases as the Government began a program of seeking deportation of known or suspected underworld undesirables.³⁴

²⁸ For a detailed outline of the history of the immigration laws see the Legislative History of the Immigration and Naturalization Act of 1952; reported at [1952] U.S. Code Cong. & Ad. News, 1563-1674; 1674-1682.

²⁹ See Gordon & Rosenfeld, *Immigration Law & Procedure* § 20.1, 20-10 thru 20-11 (1975).

³⁰ See, e.g., *U.S. v. Ginsberg*, 243 U.S. 472, 37 S.Ct. 422 (1917); *U.S. v. Ness*, 245 U.S. 319, 38 S.Ct. 118 (1917); *Johannessen v. U.S.*, 225 U.S. 227, 32 S.Ct. 613 (1912).

³¹ See, e.g., *U.S. v. Schneiderman*, 320 U.S. 118 (1943), *Baumgartner v. U.S.*, 322 U.S. 665, 64 S.Ct. 1240 (1944), *Knauer v. U.S.*, 328 U.S. 654, 66 S.Ct. 1304 (1946), *Maisenberg v. U.S.*, 356 U.S. 670, 78 S.Ct. 960 (1958), *Nowak v. U.S.*, 356 U.S. 660, 78 S.Ct. 955 (1958).

³² See *Baumgartner v. U.S.*, 322 U.S. 665, 64 S.Ct. 1240 (1944).

³⁴ See *Shaughnessy v. U.S. ex rel. Accardi*, 349 U.S. 280, 75 S.Ct. 746 (1955). Among the cases which appear to be part of the Government's effort are *U.S. v. Montalbano*, 236 F.2d 757 (3rd Cir. 1956) affirmed sub. nom. *Genovese v. U.S.*, 352 U.S. 952 (1956) *U.S. v. Anastasio*, 226 F.2d 912 (3rd Cir. 1955); *Corrado v. U.S.* 227 F.2d 780 (6th Cir. 1955); *U.S. v. Oddo*, 314 F.2d 115 (2d Cir. 1963).

Thus in *Costellos v. United States*, 365 U.S. 265, 81 S.Ct. 534 (1961) the Court found no reason to apply the equitable principles of laches in favor of defendant.

A review of the Supreme Court decisions in denaturalization cases over the last few decades reveals no case in which the Court has been faced with the question of whether a district court has discretion to consider the equities in determining whether citizenship should be revoked after many years.

However, lower courts have exercised discretion in determining whether citizenship should be granted. For example in *Petition of R.*, 56 F. Supp. 969 (D. Mass. 1944) the court considered whether citizenship should be denied petitioner on the grounds that she had committed the crime of adultery. Judge Wyzanski observed that with respect to the requirement of showing good moral character: "Congress seems to have invited the judges to concern themselves not only with the technicalities of the criminal law, but also with the norms of society and the way average men of good will act. . . ." *Id.* at 971. The court went on to hold that under the circumstances the certificate of citizenship should be granted.

Similarly, in *In Re Bespatow*, 100 F. Supp. 44 (W.D. Pa. 1951) the court considered whether a conviction of manslaughter barred petitioner from citizenship. After examining the circumstances of the killing and considering petitioner's good behavior for 37 years, the court held that citizenship should be granted. Some courts have subsequently interpreted Section 101(f) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1101(f) as a limitation on the court's discretion in determining good moral character.³³

It is clear that in defining the statutory criteria, the courts continue to exercise discretion in order "to ameliorate hardship and injustice which otherwise would result from a strict and technical interpretation of the law." *Wadman v. Immigration and Naturalization Service*, 329 F.2d 812, 817 (9th Cir. 1964). See e.g. *In re Briedis*, 238 F. Supp. 149 (N.D. Ill. 1965); *In Re Edgar*, 253 F. Supp. 951 (E.D. Mich. 1966); *Flumerfelt v. United States*, 230 F.2d 870 (9th Cir. 1956).

Additionally, in *In Iuanenko's Petition*, 145 F. Supp. 838 (N.D. Ill. 1958), a case similar in many respects to the instant one and containing extensive facts outlining the fear of many Ukrainians about repatriation to the Soviet Union, the court did not stop with a technical analysis of whether petitioner's entry had been lawful under the Displaced Persons Act. Instead, the court went beyond technicalities to consider the humanitarian purposes of the law and concluded petitioner should not be excluded from citizenship.

Perhaps the best example of a court's applying an equitable and non-technical interpretation of the law is *United States v. Rossi*, 299 F.2d 650 (9th Cir. 1962). In that case the defendant had assumed the identity of his brother, a Chilean, so that he could circumvent the quota restrictions placed on Italian immigrants. As in this case, the government there argued that "the facts misrepresented were material to lawful entry and that Rossi was guilty of fraudulently misrepresenting them." *Id.* at 652. The court conceded that, "[m]anifestly, [Rossi's] intention was fraudulent." *Id.* However, the court looked for more than a technical violation of the law. It considered the heavy burden of proof placed upon the government by the Supreme Court in *Schneiderman* and *Chaunt*, and held that there had been an insufficient showing that permission to enter the country would have been withheld had the true facts been known.

If discretion may be exercised in a petitioner's favor in naturalization cases where the burden rests on petitioner, then surely the court can consider equitable and mitigating circumstances in a denaturalization case where doubts are to be resolved reasonably in favor of the citizen.

From the evidence and observing defendant for nearly three weeks in trial, the court concludes defendant is an unsophisticated man with very little education who is not only willing but anxious to work. He also is a man who is not interested in "making waves" or causing trouble. Unquestionably the Germans spotted these qualities in him and selected him for training as a guard.³⁴

³³ *Gutierrez-Sosa v. Del Guercio*, 247 F.2d 266 (9th Cir. 1957); *Petition for Naturalization of O—, N—, 233 F. Supp. 504 (S.D.N.Y. 1964); In re C— C— J— P—, 299 F. Supp. ??? (N.D. Ill. 1969).*

³⁴ The court agrees with the assertion of defendant's counsel that Mr. Fedorenko wants to please and on cross-examination would finally give the answers he thought would please the questioner if the questions were slightly changed and the subject matter approached from a different angle. Consequently, the court tended to discount the later answer[s] given on a series of questions on the same subject on cross-examination. Despite the waiver of rights and the presence of an interpreter the court discounted the statement given the Immigration and Naturalization Service two years ago. With defendant's difficulty in communicating and his tendency to volunteer information that is harmful to his interest there was a pressing need for assistance of counsel.

If the court were convinced that the allegations charging defendant with atrocities at Treblinka were true, there is no doubt that defendant would not be entitled to citizenship in a country which prides itself on its adherence to principles of equality and human dignity, and whose citizenry largely comprises descendants of immigrants who sought refuge from political oppression. However, this court must decide this case on the record before it and the strict burden of proof has not been met."

The Court recognizes that "[a]n alien has no moral nor constitutional right to retain the privilege of citizenship if, by false evidence or the like, an imposition has been practiced upon the court, without which the certificate of citizenship could not and would not have been issued" *Johannessen v. United States*, 225 U.S. 227, 241 (1911). Nevertheless, where defendant has been a responsible citizen and resident for twenty-nine years, and the record as to his conduct thirty-five years ago is inconclusive, the court finds that the equities should be weighed in favor of defendant. Neither is the equitable balance tipped against defendant by his answers in 1945 and 1949. He was a victim of Nazi aggression, fearful of repatriation, many years and many miles from a home he thought to be empty of his wife and children, and was longing for a chance in America.

Because the Government has failed to meet its burden of proof judgment is entered for defendant. Under the circumstances of this case equitable considerations would also require the same result.

DONE AND ORDERED this 25th day of July, 1978.

NORMAN C. ROETGEN Jr.
United States District Judge.

AUGUST 25, 1978.

Hon. GRIFFIN B. BELL,
Attorney General,
Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: Reports have reached me that deficiencies have become apparent in the preparation of the case of *U.S. v. Demjanjuk*, a denaturalization proceeding against an alleged Nazi war criminal now living in Cleveland, Ohio.

I wish to express my strong concern over the possible inadequate prosecution of this case. A repeat of the recent Fedorenko adverse decision to the government's case in Florida would nullify and gravely jeopardize the long and persistent efforts of this Subcommittee in ridding this country of these undesirable elements. Lack of preparation and a deep realization of the importance of these proceedings may have cost the government its decision in this case. We certainly would regret seeing this happen again.

The creation of a Special Litigation Unit within INS was established to bring expertise and organization to this project.

This Unit should be fully entrusted with these cases.

I would strongly urge you to place the direction of the proceedings of the DEM-JANJUK case in the hands of the Special Litigation Unit. We cannot afford the risk of losing another decision.

With best wishes.

Sincerely,

JOSHUA EILBERG,
Chairman.

"Because the court has not found defendant committed the atrocities the Government claims he committed at Treblinka, it is not necessary for the court to confront the issue of whether sufficient duress was shown (or could be shown, in the eyes of the law) by defendant to excuse such conduct. If the court had found that the Government met its burden of proof in establishing that defendant committed the alleged atrocities at Treblinka, when it would have been necessary for the court to have granted a continuance in order for defendant to present testimony of the Russian witnesses he claimed could exonerate him.

COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
Washington, D.C., September 21, 1978.

HON. GRIFFIN B. BELL,
Attorney General,
Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: This is to express my deep and continuing concern over the Department of Justice's investigation and prosecution of alleged Nazi war criminals residing in the United States.

I have just reviewed the decision in the *Fedorenko* case and quite frankly, I am appalled by the government's handling of this particular case. As you know, we have received the invaluable assistance of the Israeli Government on all of our investigations; and I am extremely concerned that our government's treatment of the Israeli witnesses during the *Fedorenko* trial and the lack of proper witness preparation may jeopardize the future cooperation of that government.

I might add that Israeli officials and interested members of the Jewish community in this country have conveyed to me their strong sense of frustration and disappointment concerning the recent course of events surrounding the litigation of other active cases.

There is a general feeling that the government attorneys assigned to prosecute the various denaturalization and deportation cases are incompetent and ill-prepared. Furthermore, I remain confused as to the function and responsibilities of the Special Litigation Unit, which was established to coordinate the investigation and prosecution of these cases. It was my understanding that this Unit would exercise total authority over the handling of these cases and that appropriate instructions were issued to the various U.S. Attorneys' Offices to clarify that arrangement.

Evidently, these instructions were never implemented and, as a result, the current relationship between the Special Litigation Unit and the various U.S. Attorneys' Offices is unclear at best.

Moreover, I remain deeply disturbed by the inordinate delays which were, and continue to be, encountered in: (1) bringing the pending cases to a just conclusion; (2) instituting new cases; (3) staffing the Special Litigation Unit; and (4) obtaining eyewitness testimony from persons residing in the Soviet Union.

For example, I have just learned that, despite my continuous urgings, no investigators are currently employed by the Special Litigation Unit. Secondly, it is regrettable that Justice Department lawyers have just recently returned from the Soviet Union, when you consider that I originally made such a request in April of 1977.

Such delays are totally unacceptable and are a clear indication that the Department of Justice and the Immigration and Naturalization Service do not appreciate the urgency and importance of the task confronting our government. Unless the Department gives its full support and cooperation to this serious matter, I am convinced that these cases will not be diligently investigated nor will they be properly and expeditiously prosecuted.

I would request you to personally review the entire situation and I am most anxious to receive your comments on how the concerns, which I have expressed herein, can be alleviated.

With kind regards,
Sincerely,

JOSHUA EILBERG,
Chairman.

APPENDIX 4

CORRESPONDENCE RECEIVED BY THE COMMITTEE COMMENTING ON GAO FINAL
REPORT ON ALLEGED NAZI WAR CRIMINALS

SKYLINE RIDGE,
Bridgewater, Conn., May 17, 1978.

Congressman JOSHUA EILBERG,
House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR CONGRESSMAN EILBERG: My experience was quite different from what the General Accounting Office succeeded in digging up for you, as reported in this morning's New York Times. It must have been hard work, and rather wasteful of the taxpayer's money over a period of seventeen months, to come up with 21 "alleged nazi war criminals" supposedly "utilized" by the C.I.A. and the FBI as "sources of information" during the height of the Cold War. When I worked for the C.I.A. via Radio Free Europe—a contribution to my country and the fight against Communism of which I am inordinately proud—I had among my "sources of information" a number of former Nazis, including a general named Andras Zako, who had been chief of the Hungarian Army's G-2 during World War II, and, therefore, an exceptionally valuable source. The "deal" I managed to make with him committed the United States to nothing. But it would have been extremely lucrative to us, especially in the event of a confrontation with the U.S.S.R. in Europe, that did not seem as far fetched then as it appears to be today.

When I returned from the "mission" and presented my new set of informants to certain case officers in Washington, D.C., they indignantly refused to have anything to do with General Zako and his ilk, and reprimanded me for even attempting to conclude such an "arrangements" whatsoever with former Nazis, no matter how useful they could have been at a time when the C.I.A. and the FBI were still our first line of defense, even as they would be today, if dopes, dupes and Soviet agents in our midst had not conspired to destroy their full effectiveness.

In point of fact, part of my pride in the old C.I.A. stemmed from the sincere liberalism of its operatives on all levels, and their dedication to our way of life—the latter including the opposition that developed within the Agency, not only to the Communists but also to the efforts of Senator Joe McCarthy to undermine our democratic principles.

Sincerely,

LADISLAS FARAGO.

SKYLINE RIDGE,
Bridgewater, Conn., April, 23, 1978

MY DEAR PRESIDENT CARTER: I am a jew, a survivor of the Holocaust. But although I am a proud and grateful citizen of the United States, which gave me so much and to which I give all I have in body and soul, I feel personally threatened by your policies in the Middle East. I was in Germany in 1928-35, as a reporter for the New York Times and the Associated Press, during the deployment of Nazism and its first years in power. I clearly remember the air of forebodings during those years. I somehow sense a similar portent in the atmosphere in today's America. For the first time in my forty-one years in the United States, I am subjected to anti-Semitic slurs when I dare to defend Israel. And each time I am reminded my defamer that the slur was meant as a reflection of your policies.

I am certain those policies will fail to bring tranquility or peace to that embattled area of historic strife, if only because their terms are impractical and unacceptable to every thing and feeling inhabitant of the area, no matter what some of them may say under duress. But I am afraid they will produce—even as they are already generating—widespread Judeophobia in the United States. The latent anti-Semitism of some of my fellow citizens emerges freely as anti-Zionism, and is given respectability and viability by your harsh and discriminating stance.

I agree with your fellow Georgian, a wise man named R.M. Travis, who wrote some time ago in *The Southern Israelite* of Atlanta: "An additional danger inherent in the unsavory attempt to give the problem a Jewish orientation is the reaction of certain elements among our people. We are courting the real possibility of a split that will range ethnic groups one against the other. This could undermine the security of our Jewish citizens, increase anti-Semitism and induce paranoi among many Americans."

I am afraid that the residue of your embracement of the propaganda of Palestinian extremists, the adoption of the cause in their own sloganeering terms, is creating a backlash from which Jews in the United States are suffering a traumatic crisis of identity and will probably also suffer physical harm. The other day a young man from Brooklyn wrote a rueful letter to a New York newspaper, commenting on the outburst of Miss Vanessa Redgrave, equating Zionism with hoodlumism. "I have now been termed," wrote Mr. Robert Paris, "an imperialist by Anwar Sadat, a racist by the UN and a hoodlum by Vanessa Redgrave. None of them claims to be anti-Semitic; they are only anti-Zionist."

During Prime Minister Menachem Begin's recent visit to the United States, when Southern hospitality was conspicuous by its absence from the White House, you gave a convincing impression that so are you.

Sincerely,

LADISLAS FARAGO.

BUSTLETON-SOMERTON SYNAGOGUE
Philadelphia, Penna., June 5, 1978.

Hon. JOSHUA EILBERG,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN EILBERG: I appreciate having received a copy of the GAO report on the INS investigations of alleged Nazi war criminals. While its contents seem to substantiate the claim that there has not been a massive overt attempt to hinder such investigations, it leaves unanswered, at least in my mind, the possibility of covert and less than massive attempts to stifle adequate investigations.

Perhaps the most disturbing aspects of this report were the indication of poor administration of INS files and records and the difficulty of obtaining information from other U.S. Government agencies and other governments. That the State Department felt that for political reasons information should not be sought on alleged war criminals from Russia and Eastern European governments is particularly disappointing.

In the GAO report, great weight was attached to an "independent study of the INS" of March 1977. The fact that the individual hired for this study was a former employee of the INS would lead me to question the investigator's objectivity and impartiality.

However, to be fair, it is obvious that an improvement in the entire area of INS investigations of alleged Nazi war criminals has taken place since the establishment of the Project Control Office in 1973 and the subsequent establishment of the Special Litigation Unit under the direct control of the General Counsel. That together with a willingness to seek more information from other governments promises more efficiency in and a higher priority for such cases.

It is my sincere hope that your subcommittee will continue its oversight responsibility in this subject and will encourage all U.S. agencies to respond in an open and timely fashion to request for information.

Thank you for your efforts and for allowing me to see this full report.

Sincerely,

RABBI HOWARD LIFSHITZ.

ISRAEL POLICE HEADQUARTERS,
INVESTIGATION OF NAZI WAR CRIMES,
Tel Aviv, Aug. 24, 1978.

Hon. JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship, and International Law Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN EILBERG: Thank you for enclosing for my review a copy of the General Accounting office's report about Nazi War Criminals in the U.S. and asking for my comments. I think the report was a good one. As the report says, the investigations of alleged-Nazi War Criminals residing in the U.S.A. were deficient or perfunctory before 1973, and have improved since then. We agree. Nevertheless more can be done. In the past we have not been totally satisfied with the efforts and coordination of Nazi prosecutions in the U.S., but I hope for better development in the future with the establishment of Mr. Mendelsohn's Special Litigation Unit in Washington, D.C. It would be best if the focus of all our contact were with this

office, but it is doubtful if this Unit is large enough to handle all Nazi prosecutions in the U.S. The proper prosecution of these cases is very important to us, and we believe your Committee can make it certain, that prosecutions are organized in the correct manner.

I have just finished reading the decision in the *Fedorenko* case and I assume you have read it too. I'm overlooking "pearls" like: "*They were not allowed to fire a rifle or to keep one*" (Page 12 of the decision), and: "*Fedorenko had rights that the typical prisoner of war does not have, for example: carrying a rifle and a pistol . . . defendant and the other prisoner guards near him fired over the heads of the prisoners. . . .*" (Page 39 of the decision) and others. But notwithstanding the substance of the testimonies heard, while I do not want to interfere with the American legal process, I must tell you how shocked, saddened and disappointed I am. The decision leaves me wondering whether it is true or some macabre joke. In what other way can you explain comparing: "every Jewish prisoner who survived Treblinka because each one of them assisted the SS in the operation of the camp" (Page 37 of the decision), with the defendant Fedorenko who served as a SS guard at the death camp of Treblinka as a "victim of Nazi aggression" (last Page of the decision). This is more than I can take—and I hope more than the civilized world can take as well. I find this comparison a disrespect of the basic principals of humanity, macabre irony and rubbing-in salt into the open wounds of every Jew. Were Jews victims of Nazi aggression? Reading the decision makes me wonder. With a decision like this I can easily understand our witnesses, who expressed their disappointment of the way they were unprotected while roughly attacked in court, and it seems to me that it will be hard to convince the witnesses to appear again at an American Court.

I would be most grateful if you would be able to do something this decision to be appealed. Thank you again for your valuable assistance.

Sincerely yours,

MENACHEM RUSSEK,
Chief Superintendent.

cc: Miss Elizabeth Holzman
Mr. Martin Mendelsohn

SCHIANO & WALLENSTEIN,
80 WALL STREET,
New York, N.Y., May 30, 1978.

Hon. JOSHUA EILBERG,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington,
D.C.

DEAR MR. EILBERG: I was pleased and flattered to receive your letter of May 22, 1978, submitting for my perusal the GAO report. I cannot help but agree with your observation. This letter is merely a preliminary response as I hope to outline in detail the errors, discrepancies, contradictions, etc., contained in the report.

My purpose in responding immediately is to ask whether we may receive information concerning the identity of some of the persons referred to in the report. It is important in order to evaluate the observations made by these so-called individuals who "had responsibilities for these cases or who were in positions of authority . . ." Only in that fashion can we ascertain the qualifications, reliability and competency of those persons making the alleged observations.

For instance, there is the untrue, erroneous, preposterous declaration by an INS official that there was no formal procedure for reviewing documents referred by other agencies. In addition, a former INS official stated that it was a common practice for district office personnel not to review FBI documents received by mail (as opposed to Pony Express, I suppose). The report states that when the documents were received, clerical personnel merely placed them in the file. In fact, if there is any current INS official admitting to such a practice, he would be violating internal instructions, procedures outlined in the investigative manual, and would be in a sense, hiding information. Informational reports received from the FBI, for instance, must have classifications. The file into which such reports are placed must be accorded the same level of classification. This is not a clerical task. The file, if not assigned, must be given to someone, notably a supervisor, for review and action. There are procedures for the person reviewing the confidential material, especially secret material, to sign receipts for the material as well as the file. I could go on extensively to demonstrate how ridiculous the observation made on page 10 of the report is.

Additionally and generally, I do take exception to the language used in the report, such as "widespread conspiracy." I do not know why there is any need to modify any conspiracy or identify it as being widespread or ignore it if not widespread. The investigation itself admits that it cannot rule out the possibility of undetected,

isolated instances of deliberate obstruction. This represents the same type of evasive language and maneuver which we accused the agency of.

The report at best is inadequate. If you recall, when we appeared together on the "MacNeil-Lehrer Report," I emphasized that there should be an investigation of the problem; but that the investigative efforts should concentrate on the period of time prior to 1973. The GAO perhaps found it convenient to direct their attention and to write extensively on all that occurred since 1973. I shall deal with this observation in greater detail later.

With your permission I shall withhold further comment until my next report, where I hope to particularize the errors and inadequacies of the GAO presentation. Moreover, you might find it more desirable and to your interest for me to appear in Washington at your convenience for an in-depth discussion of the report. I shall be pleased to come at my own expense, and I suggest that perhaps an outside task force, including myself and persons such as Chuck Allen, meet with you in order to chronicle the list of objections under the report.

I think we are all disappointed by this report, and it is a shame that so much time and money was wasted on this exercise of incoherence. It seems that the same genius and dedication that is applied to the prosecution of our citizens suddenly disappears and is replaced by supercautiousness, if not timidity, doubt and hesitancy—all expressed in the remarkable language of Tweedledee and Tweedledum.

I await your instructions.

Sincerely,

VINCENT A. SCHIANO.

139 RAYMOND STREET
Darien, Conn., July 18, 1978

Hon. JOSHUA EILBERG,
Committee on the Judiciary,
U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN EILBERG: Thank you for your letter of July 10th 1978 received in the evening of the 14th, inviting me to attend a hearing in Washington on July 20th. Confirming my telegram of today's date, I regret that I am unable to be in Washington on that day; however, I trust that the observations which follow will assist you in your endeavours while precluding the need for me to testify in person.

As a matter of fact, the testimony which I might contribute in respect of the subjects described in the fourth paragraph of your letter I have already largely given in two hearings of the House and Senate, in 1949 and 1950 respectively. Of the first, conducted by one of your predecessors, Francis E. Walter, my testimony is contained in pages 59 through 75 of House Report No. 1507, 81st Congress 2nd Session, entitled "Displaced Persons in Europe and their resettlement in the United States", dated January 20, 1950. Of the second hearing, my testimony is contained in pages 827 through 880 of the Report entitled "Displaced Persons—Hearings before the Sub-Committee on Amendments to the Displaced Persons Act of the Committee on the Judiciary, United States Senate, Eighty-First Congress, First and Second Session, on Bills to Amend the Displaced Persons Act of 1948, March 25, 1949 to March 15, 1950". (Government Printing Office No. 63475). Both of these reports contain other testimony pertinent to the implementation of the Act which might be of interest. However, I should mention that the Senate Committee Chairman was extremely hostile towards the Displaced Persons Act, the Commission and the proposed amendments, an attitude which should be taken into account in considering the tone and substance of the interrogations.

In the last clause of your fourth paragraph you invite my opinion as to the reasons why "so many" of these individuals (the alleged Nazi war criminals) succeeded in gaining admission under the Displaced Persons Act. Frankly, I cannot voice an opinion thereon because I do not know how many such persons did in fact so gain admission. The GAO report does not identify the procedure or program under which each individual in question entered the United States, and to my knowledge there were six such possibilities in addition to the DP Act since the end of World War II. To the extent that the means of entry may be relevant to the current investigations it would seem to me useful to establish in each case the method which obtained, and I would believe that the INS files on all these cases must contain that information as the basis for visa issuance. The files of such cases as are revealed to have gained admission under the DP Act could then be examined for fraud or flaws, and thus possibly shed light on how the controls were evaded. Beyond this, if I may offer a philosophical observation, the term "many" is relative, and while of course "none" would be better, the actual number of undesirables who

gained admission might well be weighed against the approximately 400,000 legitimate and deserving displaced persons who were admitted in the process.

Further in respect of the GAO report insofar as it refers to the Displaced Persons Act, the Commission and its operations, I would have the following comments:

the second paragraph on page 2 cites the closing date of the DP Act as June 30, 1953, whereas the program ended on June 30, 1952; and the number of persons admitted under the Act was in the neighborhood of 400,000, rather than the 339,698 stated;

sentence (1) in the 6th paragraph of page 3 states "criticized . . . the Displaced Persons Commission for accepting certain international refugee organizations"; this sentence is incomprehensible;

sentence (2) in the same paragraph refers to "aliens . . . admitted to the United States *despite* adverse reports in the Berlin Document Center . . ."; the term "despite" is incorrect and a misrepresentation of the procedure which sometimes allowed otherwise eligible displaced persons to sail *before* the reports from the BDC were received, subject to the return by the INS of any rare individual on whom the report contained disqualifying information. The reason for this procedure, explained in my testimony before the Senate Committee, was to expedite the general movement of cases in the face of long delays in receiving the BDC checks, in the knowledge that adverse information would be infinitesimal, and in response to the intense humanitarian concern in the United States that as many displaced persons as possible be moved within the short life-span of the DP Act.

the last paragraph on page 32 refers to background investigations conducted by the US Army and Displaced Persons Commission on "some" of the individuals contained in the GAO list of 111. I presume that these are in effect cases duly processed under the DP Act and, again, it would be helpful to know the exact number represented in the term "some".

I would suggest, Mr. Eilberg, that a review of my testimony in the two reports of previous hearings mentioned above may answer most of the questions which might have been addressed to me at the hearing, but I shall in any case gladly remain at your disposal for any further clarifications or assistance for which you might subsequently care to call upon me.

With cordial regards, I remain

Sincerely yours,

ALEXANDER E. SQUADRILLI.

PS: As you requested, I enclose herewith a short biographical outline of myself.

APPENDIX 5

GERETY & GERETY,

1960 BRONSON ROAD,

Fairfield, Conn., September 5, 1978.

ARTHUR P. ENDRES, Jr.,

Counsel, Subcommittee on Immigration, Citizenship, and International Law, Rayburn House Office Building, Washington, D.C.

DEAR MR. ENDRES: Enclosed is the transcript of hearings before the Subcommittee on alleged Nazi war criminals which you sent for review to me under date of July 25, 1978. I was on vacation during most of August and did not have the opportunity to study the transcript until recently. Fortunately, I found very few errors and none of them were significant. I have indicated in the margin where corrections should be made.

I have, however, found two areas of questioning with respect to which I believe my responses, or those of my deputy, Mr. Rieger, were incomplete or inadequate and I request that this letter be added to the record as a supplemental statement.

(1) At several points during the questioning (e.g. line 1889, page 100), we were asked where the committee might go to explore further whether Nazi war criminals were discovered in our investigations and, if so, how many.

Neither Mr. Rieger nor I had any recollection of any specific case nor could we remember how many Nazis might have been discovered.

I would like to suggest that the committee should obtain the testimony in that regard of the man who was my director of European operations. His name is Wolf Lehmann. He is a Foreign Service Officer presently serving as Consul General at Frankfurt, Germany. Mr. Lehmann was born in Berlin. His family left Germany after his father was discharged from his job as a professor at Berlin University. The discharge occurred because the father's ideas were not acceptable to the Nazis. In addition, the father was partly Jewish. The Lehmann family fled to Italy and then

came to the United States. I believe that Mr. Lehmann would have been particularly aware of our desire to exclude people with Nazi backgrounds.

(2) At lines 2256 through 2263, pages 119 and 120, Ms. Holtzman asked me to explain why no effort was made to obtain information from Eastern European countries about applicants who were of Eastern European or Russian origin.

I would like to say in answer to that question that to make the kind of check Ms. Holtzman suggested would have required us to supply the Soviets with the names of hundreds of thousands of people who had fled from Soviet domination and were living in refugee camps in Western Europe. Most of them were sustained, in large measure, by the hope that they would be able to resettle in the free world. It would have been a heartless thing to furnish their names to the Soviets, who could wreak God knows what vengeance on the relatives they left behind. If we had done that, and the fact became known, few would have applied for visas. Furthermore, I doubt that we would have gotten any reliable information.

For those reasons, I believe that our procedures were correct then and would be adopted today in any similar situation.

Very truly yours,

PIERCE J. GERETY.

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